

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

TYSON FOODS, INC., et al,)

Defendants.)

4:05-CV-00329-TCK-SAJ

THE VIDEOTAPED DEPOSITION OF
TIM ALSUP, produced as a witness on behalf of the
Plaintiff in the above styled and numbered cause,
taken on the 12th day of June, 2008, in the City of
Tulsa, County of Tulsa, State of Oklahoma, before
me, Lisa A. Steinmeyer, a Certified Shorthand
Reporter, duly certified under and by virtue of the
laws of the State of Oklahoma.

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(Via phone)

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I N D E X

W I T N E S S P A G E

TIM ALSUP

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1 (Whereupon, the deposition began at
2 9:10 a.m.)

3 VIDEOGRAPHER: We are on the Record today
4 for the deposition of Mr. Tim Alsup. Today is June
5 12th, 2008. The time is 9:10 a.m. Would counsel 09:10AM
6 please identify themselves for the Record?

7 MR. GARREN: Richard Garren for the State
8 of Oklahoma.

9 MR. BULLOCK: Louis Bullock for the State
10 of Oklahoma. 09:11AM

11 MS. TUCKER: K. C. Tucker for the George's
12 entities.

13 MR. HIXON: Phil Hixon for Peterson Farms.

14 MR. TUCKER: John Tucker, Todd Walker and
15 Del Ehrich appearing for the Cargill defendants. 09:11AM

16 MR. GARREN: Jennifer?

17 MS. GRIFFIN: Jennifer Griffin for Willow
18 Brook Foods.

19 VIDEOGRAPHER: Thank you. The witness may
20 be sworn in. 09:11AM

21 MR. GARREN: Jennifer, we're going to
22 invoke the Rule of Sequestration again and if
23 anybody else joins the conference, we need to have
24 them announce and if they leave so the Record is
25 clear on who is in attendance today. 09:11AM

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1 TIM ALSUP
2 having first been duly sworn to testify the truth,
3 the whole truth and nothing but the truth, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. GARREN:

7 Q Mr. Alsup, please state your name for the
8 Record, please.

9 A Tim Alsup.

10 Q All right, and have you ever given a 09:11AM
11 deposition before?

12 A Yes, sir.

13 Q And how many depositions have you given?

14 A One.

15 Q And was that the one in the City of Tulsa case 09:11AM
16 in August of 2002?

17 A Yes, sir.

18 Q All right. No other depositions in either
19 civil or criminal matters?

20 A No, sir. 09:12AM

21 Q Okay. I'm going to be asking questions today.

22 If you don't understand my questions, please ask me

23 to rephrase them or reword them so that you can, so

24 that we can get a clear understanding between

25 ourselves to what I'm asking and what your answers 09:12AM

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1 are. All right? If we need to take a break, we
2 can. We'll break generally every hour because of
3 changing the tape.

4 A Okay.

5 Q So we usually use that as time to refresh or 09:12AM
6 do whatever you need to do.

7 A Okay.

8 Q All right. Identify your current employer,
9 please.

10 A Cargill Turkey Production, LLC. 09:12AM

11 Q How long have you been employed with the
12 Cargill Turkey Production, LLC?

13 A Four years.

14 Q Were you employed then at the time of its
15 inception? 09:12AM

16 A The inception of Cargill?

17 Q Cargill Turkey, LLC.

18 A Yes, sir.

19 Q All right. Who did you work for before that?

20 A Cargill, Incorporated. 09:12AM

21 Q We'll come back to that and let me ask you
22 about your education. You have a degree in poultry
23 science from the University of Arkansas; is that
24 correct?

25 A Yes, sir. 09:13AM

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1 Q And when was that obtained?

2 A The year I received my degree was 1986.

3 Q And it's my understanding you also have a
4 minor in ag, agricultural business with that degree?

5 A Yes, sir. 09:13AM

6 Q Do you have any other degrees from any other
7 institutions?

8 A No, sir.

9 Q Have you obtained any other formal training or
10 certification? 09:13AM

11 A In what?

12 Q Anything. Do you have a certification for
13 training in any other field or subject?

14 A I have had -- I've been certified as a
15 nutrient management plan writer in Arkansas. That 09:13AM
16 certification has expired, but I have been trained
17 there.

18 Q When were you certified the first time?

19 A I believe in 2002 or '3, somewhere in there.

20 Q What was the reason for your obtaining that
21 certification? 09:14AM

22 A To better understand how nutrient management
23 plans are written and to maybe act as a resource for
24 our contract producers if they had questions
25 regarding a nutrient management plan. 09:14AM

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1 Q Is that the only state in which you've been
2 certified as a nutrient plan manager?

3 A Yes, sir.

4 Q Did you write any plans?

5 A No, sir. 09:14AM

6 Q So your certification was for a period of one
7 year?

8 A Yes, sir.

9 Q And what kind of classes did you take to
10 obtain that certification? 09:14AM

11 A I believe there was a three or four-day class
12 that I attended.

13 Q Where was it attended?

14 A In Springdale.

15 Q Who presented that in order for you to obtain
16 the certification? 09:15AM

17 A The State of Arkansas.

18 Q What was the date that you first began working
19 for Cargill?

20 A After I graduated college. It would be in
21 1986. 09:15AM

22 Q And where was the location where you first
23 began working for Cargill?

24 A In the Springdale complex.

25 Q Did you have any other employment history 09:15AM

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1 prior to 1986 or were you simply in school?

2 A I was in school.

3 Q When did you graduate from high school?

4 A 1982.

5 Q And where was that?

09:15AM

6 A Decatur.

7 Q Has your employment with Cargill or the
8 Cargill entities been continuous since 1986?

9 A Yes, sir.

10 Q During the entire time that you worked for

09:16AM

11 Cargill, have you lived in basically the northwest
12 Arkansas area?

13 A Yes, sir.

14 Q What cities have you lived in besides Decatur
15 and Springdale?

09:16AM

16 A Siloam Springs and Rogers, Arkansas.

17 Q Have your duties required you to work at any
18 other complex for Cargill other than the Springdale
19 complex?

20 A No, sir. I've never transferred to another
21 complex.

09:16AM

22 Q You've lived in Arkansas for how long?

23 A Since I was in third grade. So let's see.
24 For 35 years, 34 years.

25 Q Let's talk about the positions you've held in

09:16AM

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1 the Cargill entities. It's my understanding you've
2 been in the breeder department as a farm manager; is
3 that correct?

4 A Yes, sir. That was my first job.

5 Q And what was the period of time in which you 09:17AM
6 had that position?

7 A The first year and a half, two years I worked
8 for Cargill.

9 Q So roughly from '86 to '88?

10 A Yes, sir, roughly. 09:17AM

11 Q Where was the breeder farm location? Was it
12 one farm you were manager for or several?

13 A One farm.

14 Q All right, and where was that farm located?

15 A In Siloam Springs. I think that's the mailing 09:17AM
16 address.

17 Q Does that farm have a name assigned to it?

18 A Breeder Farm No. 4.

19 Q How many houses did it have?

20 A It has five. 09:17AM

21 Q And did it have five at the time you were
22 there?

23 A Yes, sir.

24 Q Did that number change at any time -- or let
25 me ask it this way: To your knowledge has the 09:18AM

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1 number of houses changed at any time at that
2 location?

3 A No, sir.

4 Q All right. I also understand that you were a
5 preproduction flock supervisor; is that correct? 09:18AM

6 A Yes. That was a flock supervisor in the
7 breeder department, yes, sir.

8 Q And what was the period of time that you had
9 that position?

10 A Roughly for the next three to four years. 09:18AM

11 Q So up until about '92 or thereabouts?

12 A No, sir. It was more like maybe '90, '91.

13 Q All right. As a flock supervisor, what were
14 your duties?

15 A To check on the bird health of our 09:18AM
16 preproduction breeders and to help supervise the
17 crews that went out to do vaccinations for working
18 with the birds.

19 Q Working with birds other than vaccination you
20 mean? 09:19AM

21 A Debeaking, vaccinations, selections.

22 Q And were those confined to the breeders as
23 opposed to the grow-out birds or poults?

24 A Yes, sir. This was all in the breeder.

25 Q And those breeders and the breeder farms are 09:19AM

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1 owned and operated by Cargill itself rather than
2 contract growers; is that true?

3 A The breeder -- the layer facilities are owned
4 by Cargill. The preproduction facilities are
5 contract. 09:19AM

6 Q Tell the court, if you would, what you mean as
7 a preproduction facility.

8 A A breeder that -- a house that houses a
9 breeder that is not in -- that is not laying eggs,
10 not in production. 09:20AM

11 Q In Cargill's business, are those all operated
12 by contract growers, that kind of facility?

13 A At the Springdale location, yes, sir.

14 Q Do you know that to be different in any other
15 locations? 09:20AM

16 A Sir, I do not know if Cargill owns a
17 preproduction facility in another location, no, sir.

18 Q You're not familiar with Ozark?

19 A In Ozark, that's part of the Springdale
20 facility now. 09:20AM

21 Q Okay. Was it back in the early '90's when you
22 were talking about earlier?

23 A No, sir. That was a complex in itself for
24 Cargill.

25 Q When did Ozark combine with Springdale? 09:20AM

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1 A I don't remember the year, but when Butterball
2 brought -- bought the complex, the processing plant
3 and the commercial turkeys from Cargill, they did
4 not buy the breeder farms, breeder facilities, and
5 at that time to my knowledge that is when that
6 became part of the Springdale complex.

09:21AM

7 Q Were you still the flock supervisor or some
8 other capacity?

9 A At what time, sir?

10 Q At the time this occurred, that the
11 combination of --

09:21AM

12 A Oh, no, sir. I'm sorry. No, sir, I was not
13 in the breeder department when that transaction took
14 place.

15 Q What was your title or position at the time
16 this occurred, this combination of the two complexes
17 occurred?

09:21AM

18 A I believe I was a grow-out manager.

19 Q Okay. After being a flock supervisor, what
20 was your next position with Cargill?

09:21AM

21 A I was a hatchery manager.

22 Q What period of time was that for?

23 A Approximately two years, the next two years.

24 Q What are the duties of hatchery manager?

25 A To run and operate the hatchery, to assure

09:22AM

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1 that the eggs are picked up from the breeder farms,
2 put them in the incubators, hatch out the poults and
3 deliver them to our contract producers.

4 Q Okay. Was your next position then as grow-out
5 manager after being a hatchery manager? 09:22AM

6 A Yes, sir.

7 Q Okay. What period were you grow-out manager?

8 A Approximately from '92 to 2000, 2001.

9 Q What are the duties of grow-out manager?

10 A You supervise the flock supervisors who are 09:22AM
11 actually visiting the farms. You schedule
12 placements for the contract producers, schedule
13 processing dates for those birds as well.

14 Q When you say you schedule contract producers,
15 you're talking about scheduling the birds being 09:23AM
16 placed in their facilities?

17 A Yes, sir.

18 Q Then you also schedule when they're picked up;
19 is that what you're saying?

20 A Yes, sir. 09:23AM

21 Q When did you obtain the title of environmental
22 coordinator?

23 A My official title was Precision Ag manager. I
24 don't guess it's ever really been changed, but part
25 of those duties of being Precision Ag manager kind 09:23AM

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1 of involved environmental coordination back in 2003.

2 Q Are you saying that's when they began, that
3 kind of involved environmental coordination began in
4 '03?

5 A I'm saying that the -- the title of 09:24AM
6 environmental coordinator I've never really had.
7 Was I responsible for environmental
8 responsibilities, everybody in Cargill is
9 responsible for environmental responsibilities so --

10 Q We talked earlier. Do you recall your 09:24AM
11 testimony on August 21, 2002 in the City of Tulsa
12 versus Tyson case involving Eucha-Spavinaw?

13 A Okay.

14 Q And in that deposition, at Page 5 of the
15 deposition you were asked what is your occupation or 09:25AM
16 profession. Your answer was, I'm the environmental
17 coordinator for Cargill, Incorporated, and I do some
18 scheduling for the Springdale plant. Do you
19 remember that answer?

20 A No, sir, I don't remember, but okay. 09:25AM

21 Q Do you remember you were under oath at that
22 deposition?

23 A Uh-huh.

24 Q That's a yes?

25 A Yes, sir. 09:25AM

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1 Q Okay, and you're telling me now today you've
2 never been environmental coordinator?

3 A No, sir, that is not what I said.

4 Q Well, you said you never had the title.

5 MR. TUCKER: Excuse me, Counsel. If you 09:25AM
6 wouldn't mind permitting the witness to answer, it
7 would be appreciated.

8 A Along about that time is -- in May when I gave
9 my deposition, I do not recall the exact date that I
10 received the Precision Ag manager title. It could 09:25AM
11 have been after that deposition, okay, and before
12 for not having an official title for that
13 deposition, I may have put or I did put
14 environmental coordinator, but I do not know the
15 exact date that that changed. 09:26AM

16 Q Do you know of anybody in the Cargill entities
17 -- let's start with the LLC, Cargill Turkey
18 Production, LLC. When I refer to that entity, LLC,
19 you understand what I'm saying then?

20 A The -- yes, sir, I believe so. 09:26AM

21 Q If I use that term, LLC, you know I'm talking
22 about the entity that you now work for that started
23 in 2004; is that correct?

24 A I believe that was the date that that started,
25 yes, sir. 09:26AM

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1 Q I'm more concerned that you just understand
2 what I'm asking.

3 A Okay.

4 Q If I use a term LLC, you know that's the
5 entity I'm referring to for purposes of this 09:26AM
6 deposition?

7 A Yes, sir.

8 Q And I may try to refer to Cargill as Cargill
9 or Cargill, Inc. All right?

10 A Not the LLC, okay, yes, sir. 09:26AM

11 Q All right. So we kind of distinguish
12 sometimes. It might be helpful because of the time
13 frame.

14 A Okay.

15 Q Do you know of anybody at Cargill -- at the 09:27AM
16 LLC from its inception who have held the title of
17 coordinator, environmental coordinator other than
18 what we've discussed about your title?

19 A No, sir.

20 Q Is there anyone else at the LLC who has a 09:27AM
21 responsibility, direct responsibility for
22 environmental concerns for -- as it relates to the
23 operation of the turkey growing facilities?

24 A The live production area?

25 Q Yes, sir. 09:27AM

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1 A No, sir. Well, no, sir, that's not true.
2 Everybody in the live production area has
3 environmental responsibility.

4 Q All right. When you say everybody, what does
5 that mean? 09:27AM

6 A All the employees that are in the live
7 production area, in the -- that deal with raising
8 and rearing birds.

9 Q So that would include somebody working within
10 a hatchery? 09:28AM

11 A Yes, sir.

12 Q Okay. It would include the flock supervisor?

13 A Yes, sir.

14 Q Have all of those people that you described as
15 everybody received any environmental training to 09:28AM
16 your knowledge, and when I say environmental
17 training, let me try and define that. Environmental
18 training with regard to the effects of turkey
19 production on the environment.

20 A Well, I don't -- I don't understand your 09:28AM
21 question on what effects turkey production has on
22 the environment. The flock supervisors have been
23 trained on -- as being a second set of eyes for our
24 contract producers to do audits for them, to help
25 them answer any questions or at least be able to 09:29AM

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1 point them in the right direction to get their
2 questions answered.

3 Q What training did they receive for that
4 purpose?

5 A They have attended some seminars. I've talked 09:29AM
6 to them.

7 Q Who puts on the seminars that they've
8 attended?

9 A Sir, I don't know all the seminars they've
10 attended, but it would be some trade organizations 09:29AM
11 that would probably put them on.

12 Q Did you attend those same seminars?

13 A Yes, sir, I have attended some environmental
14 seminars.

15 Q Okay, and when did you first attend the 09:30AM
16 environmental seminar?

17 A Sir, I do not know the first one I've ever
18 attended. It would have been in the late '90's, mid
19 to late '90's.

20 Q All right, and do you recall when or where 09:30AM
21 that occurred? Not when, but where that occurred?

22 A No, sir, no, sir.

23 Q Do you recall who gave the seminar?

24 A Not the exact organization, no, sir.

25 Q Give me a list of those organizations you do 09:30AM

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1 remember attending a seminar that had to do with
2 environmental effects involving turkey production.

3 A Well, U.S. Poultry & Egg has done
4 environmental seminars, but a lot of these seminars
5 that are put on, there's a lot of different backers,
6 and I don't know who, quote, would be a host or a
7 champion or who would actually put it on but -- so I
8 don't know. I don't know if our trade organizations
9 would have done it, industry organizations would be
10 the ones, but I do know that U.S. Poultry & Egg has
11 put on one that I have attended.

09:30AM

09:31AM

12 Q Give me some of the other associations or any
13 other entity that you know have been associated with
14 the seminars that you may have attended.

15 A Well, sir, as I said earlier, I do not know
16 what their official capacity, if they put on any of
17 them or not. They could have, but I have no
18 personal knowledge of that, so --

09:31AM

19 Q Give me the names of the groups or
20 associations that you know were there and assisted
21 in placing information in front of you involving
22 environmental concerns for turkey production.

09:31AM

23 A Sir, the meetings that I have attended, the
24 organizations were not the ones doing the talking or
25 doing the presentations. They usually -- for all

09:32AM

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1 the ones I've ever attended, academia, from
2 universities, they've had people from the federal
3 government, they've had state officials actually
4 doing the PowerPoint, the presentations for
5 everybody. 09:32AM

6 Q Was University of Arkansas any of those
7 universities you just described?

8 A Yes, sir, they could have been at some of
9 them.

10 Q Oklahoma State University one of those 09:32AM
11 universities that you've just described?

12 A I do not remember an exact OSU official
13 talking any but, yes, it is possible.

14 Q Can you remember any other university by name
15 besides the two we just discussed that would have 09:32AM
16 been a participant or present at one of these
17 environmental seminars?

18 A The University of Georgia.

19 Q Any others?

20 A No, sir. 09:33AM

21 Q When you testified in 2002 that you were
22 environmental coordinator, what did you understand
23 your duties were as that title?

24 A At that time we were in litigation with the
25 City of Tulsa, and my duties were to help our legal 09:33AM

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1 team with that.

2 Q So your -- as an environmental coordinator in
3 2002, did you have any responsibility with the
4 contract growers?

5 A I was acting as a resource for them. I was -- 09:33AM
6 at that time I was attending our -- or attending
7 some meetings, was receiving some training. I did
8 help send out some letters for the -- and having to
9 pass for the states to set up meetings with the
10 growers if they wanted to talk to them. I was -- if 09:34AM
11 they called me and had a question, I could get them
12 to the right person. If there was ever a complaint,
13 I would be the one to investigate that.

14 Q What kind of complaints would you investigate?

15 A If we ever had a complaint from a state, they 09:34AM
16 would usually call me and I would go out with the
17 state official when they made the farm visit to be
18 there as -- to take them to the farm and show them
19 where it was at and they would do their
20 investigation. 09:34AM

21 Q Did you investigate any personal complaints
22 made by neighbors or others close to farms --
23 Cargill growing farms?

24 A Sir, the only complaint that I ever recall
25 from being a personal one was, back in the mid '90's 09:35AM

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1 we had a complaint about flies, and I did go out
2 there for that.

3 Q Let's talk about Precision Ag manager. Tell
4 me what you understand your duties and
5 responsibilities are. 09:35AM

6 A At that time Cargill was trying to set up a
7 business to move litter from northwest Arkansas into
8 Kansas, setting it up as a fertilizer business.

9 Q What time are you talking about?

10 A Roughly 2001, 2002 to -- well, 2002 to roughly 09:35AM
11 2004.

12 Q Was that your -- is that the extent of your
13 duties and responsibilities then as Precision Ag
14 manager?

15 A Well, yeah. We went out, visited customers in 09:36AM
16 Kansas, called producers in Arkansas.

17 Q Let -- so I understand what you are saying,
18 when you say customer, what do you mean by a
19 customer?

20 A A customer would be somebody in Kansas that 09:36AM
21 would be buying litter to use as fertilizer for
22 their fields.

23 Q A producer is wash -- what do you mean by
24 using the term producer?

25 A A contract producer would be someone who's 09:36AM

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1 raising poultry.

2 Q So that's the same thing when I use the term
3 contract grower and you use the term grower; is that
4 a fair estimation?

5 A Yes, sir. 09:36AM

6 Q Okay. So if I use the term grower, you
7 understand that's what I'm talking about?

8 A When you use the term grower, I'm interpreting
9 that as contract grower, yes, sir.

10 Q Okay. Now, were you also doing this 09:37AM
11 environmental assistance to growers when you're
12 acting as Precision Ag manager?

13 A Yes, sir.

14 Q All right. What other duties or titles did
15 you hold in around that time frame? 09:37AM

16 A I still schedule processing schedules and
17 placement schedules.

18 Q Any other duties?

19 A No, sir.

20 Q So your testimony today is that your current 09:37AM
21 position or your current title is Precision Ag
22 manager; is that correct?

23 A Yes, sir.

24 Q Is that business to move litter from northwest
25 Arkansas to Kansas still operating? 09:37AM

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1 A No, sir.

2 Q But you still hold that title?

3 A Yes, sir.

4 Q Was that business formed into a specific

5 entity like an LLC or a corporation or a 09:38AM

6 partnership?

7 A No, sir, it was not.

8 Q In 2002 who owned that business?

9 A It would have been Cargill.

10 Q Cargill, Inc.? 09:38AM

11 A Yes, sir.

12 Q Okay, and did Cargill, Inc., continue to own

13 it through 2004?

14 A Yes, sir.

15 Q In 2004 what caused it to no longer operate? 09:38AM

16 A The problems we were having a hard time

17 overcoming was, one, there was no litter.

18 Availability of litter was not there. We had a hard

19 time scheduling it, getting it there when the

20 customers in Kansas needed it. That was being 09:39AM

21 overcome. It was mainly the availability of litter.

22 I just couldn't get enough litter to make the

23 business function like it should.

24 Q Has there been any attempt to revive that

25 business? 09:39AM

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1 A No, sir.

2 Q I didn't ask you, but what is your current
3 home address?

4 A 9125 Alicia Dawn Drive, Rogers, Arkansas
5 72758. 09:39AM

6 Q In preparation for your deposition today, who
7 did you talk to?

8 A Counsel.

9 Q Any other person?

10 A No, sir. 09:40AM

11 Q What were the names of counsel that you spoke
12 to?

13 A Mr. Del, Mr. Todd and Mr. John.

14 Q Del meaning Mr. Ehrich?

15 A Yes. 09:40AM

16 Q Okay. Any others?

17 A No, sir.

18 Q Did you talk to anyone else besides counsel in
19 preparation for this deposition?

20 A No, sir. 09:40AM

21 Q What did you review in preparation for your
22 deposition?

23 A I have reviewed some documents.

24 Q Describe generally what those documents are.

25 A Most of them were production documents and 09:40AM

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1 some E-mails.

2 Q Did you look at any pleadings that have been
3 filed in this case?

4 A Describe pleadings.

5 Q Documents that would be filed with the court. 09:40AM

6 A Would that be an interrogatory question?

7 Q No. I'm going to ask you that one next, but
8 pleadings are actually filed with the court, such as
9 a complaint, an answer.

10 A An answer -- 09:41AM

11 MR. TUCKER: He's not referring to an
12 answer to a question. He's referring to a formal
13 answer filed in the court to a complaint I suspect
14 is what you are --

15 MR. GARREN: Correct. 09:41AM

16 Q Or a motion, a response to a motion, anything
17 like that. Have you read --

18 A Sir, if I did, I don't know what it was.

19 Q And the next question is, things that aren't
20 filed with the court that are typically referred to 09:41AM
21 as discovery items, discovery pleadings, have you
22 read discovery items such as interrogatories or
23 requests for admissions, document productions?

24 A Yes, sir. I looked at one of the
25 interrogatory. 09:41AM

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1 Q Okay, and when did you look at that?

2 A This week.

3 Q Was that the first time that you've seen it?

4 A No, sir.

5 Q When did you first see it?

09:42AM

6 A In April.

7 Q April of what year?

8 A Of this year.

9 Q 2008?

10 A Yes, sir.

09:42AM

11 Q All right. Have you looked at any other -- do
12 you know what the interrogatory was; what was the
13 question, the subject matter?

14 A I do not remember the exact question. I think
15 it dealt with bird numbers in the IRW.

09:42AM

16 Q Did you obtain that document by yourself or
17 was it furnished to you by someone else?

18 A It was furnished to me.

19 Q Who furnished it to you?

20 A Counsel.

09:42AM

21 Q Other than an interrogatory dealing with bird
22 numbers, do you recall seeing any other type of
23 discovery pleading or document?

24 A For preparing for this?

25 Q Yes.

09:42AM

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1 A No, sir, not for preparing for this
2 deposition.

3 Q Okay. Now, let's talk about your review of
4 those documents that didn't involve your preparation
5 for today's deposition. Have you reviewed any other 09:43AM
6 interrogatories or document requests or requests for
7 admissions in this case?

8 A Yes, sir.

9 Q And tell me when and what you reviewed.

10 A That would have been a couple, three months 09:43AM
11 ago, and it would have been in preparation for my
12 30(b)(6) deposition that was scheduled back in
13 April.

14 Q And were the pleading instruments that you
15 looked at, were they the same as those that you 09:43AM
16 prepared for for this deposition, or were they
17 different?

18 A I did -- I -- the interrogatory that I saw was
19 the same one I saw back two months ago if that's
20 what you asked. 09:44AM

21 Q I'm trying to understand what it is you looked
22 at, if it's the same or different.

23 A No, sir. It was the same one.

24 Q All right. Did you read any depositions of
25 any other witnesses in this case in advance of your 09:44AM

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1 testimony today?

2 A Not for this deposition, no, sir.

3 Q Have you read any depositions prior to today
4 that involve this case?

5 A Yes, sir. 09:44AM

6 Q And what depositions did you read?

7 A In preparing for my 30(b)(6) deposition, I
8 believe I've read Petersons, Simmons and George's.

9 Q And were those their 30(b)(6) witness
10 depositions that you read? 09:44AM

11 A I think so. I do not know.

12 Q All right. Did you read or review at any time
13 your 2002 deposition within the last year or two?

14 A Yes, sir.

15 Q When did you last review it? 09:45AM

16 A It would have been in March or April.

17 Q Of this year?

18 A Yes.

19 Q Again, in preparation of the 30(b)(6)?

20 A Yes, sir. 09:45AM

21 Q Let me hand you Exhibit No. 1 and ask you if
22 you've seen that document, sir. Do you understand
23 it's a subpoena and a notice for deposition?

24 A Yes, sir.

25 Q Do you understand that you're here today 09:46AM

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1 pursuant to the subpoena and notice of deposition?

2 A Yes, sir.

3 Q All right. You don't -- do you recall seeing
4 this document?

5 A Sir, I don't know if -- it may have been 09:46AM
6 E-mailed to me. I --

7 Q All right.

8 A But, you know --

9 Q That's okay. Let me ask you this. Let's
10 change the subject. I want to ask you your 09:46AM
11 knowledge about activities that have occurred in the
12 northwest Arkansas area. First off, I want to ask
13 you, are you familiar generally where the boundaries
14 of the Illinois River watershed are?

15 A Yes, sir, generally. 09:47AM

16 Q You're familiar with the boundaries also of
17 the Eucha-Spavinaw watershed I take it?

18 A Yes, sir, generally.

19 Q Okay. What do you know to be the common use
20 of poultry litter? Let's talk about that first. 09:47AM
21 What do you mean when you use the term poultry
22 litter; is that new bedding or is that something
23 different?

24 A No. New bedding would be bedding material.

25 Poultry litter would be bedding material, some 09:47AM

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1 waste, feed maybe and poultry excrement.

2 Q Okay, and that would include feces and urine
3 as the excrement?

4 A Yes, sir.

5 Q All right. Would it include feathers that 09:47AM
6 have been dropped into the bedding material?

7 A Yes, sir.

8 Q Could it include on occasions part or whole
9 carcasses?

10 A I hope not, but if one -- if a dead bird 09:48AM
11 wasn't picked up, it is possible, yes, sir.

12 Q All right. When I use the term poultry waste,
13 I'm referring to the same thing that you use as
14 litter. So my definition includes the same things
15 you've just described but I call it poultry waste. 09:48AM
16 So if I use that term, you understand what I'm using
17 today, will you not?

18 A I -- to me it's not a waste. It's an asset,
19 and I call it poultry litter but, okay.

20 Q Do you understand what I'm asking you, that if 09:48AM
21 I use that term, I'm using it in the same definition
22 that you understand the word litter to mean?

23 A Yes, sir.

24 Q Okay. As long as you can recall living in
25 northwest Arkansas, what do you know to be the 09:49AM

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1 common use for used poultry litter?

2 A Poultry litter has been used as a fertilizer.

3 Q In doing that, how does that occur?

4 A How does poultry litter act as a fertilizer?

5 Q Yes, sir. 09:49AM

6 A Poultry litter contains nutrients that crops
7 and forages can utilize for growth, and that's how
8 it acts as a fertilizer.

9 Q Okay. It doesn't act that way when it's in a
10 poultry barn, though, does it? 09:49AM

11 A Well, no, sir. It's -- in the poultry barn it
12 is -- it's used as bedding for the birds. We do not
13 have forages growing in a turkey barn.

14 Q So it must be removed from the poultry barn
15 and spread on the land; is that a correct statement? 09:49AM

16 A Yes, sir. It has to be applied to the area
17 that you're wanting forages or crops grown, yes.

18 Q And you understand that to be the common use
19 as far as you can recall for used poultry litter in
20 the area of northwest Arkansas? 09:50AM

21 A Yes, sir.

22 Q Who supplies the new bedding material for the
23 brood house?

24 A Who delivers it?

25 Q Who supplies it, pays for it and makes it 09:50AM

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1 available?

2 A Cargill pays for it.

3 Q Do they -- does Cargill provide or pay for any
4 bedding material that goes to the grow-out house?

5 A No, sir, not that I'm aware of. 09:50AM

6 Q Is the bedding material that was once in the
7 brood house moved to the grow-out houses?

8 A Yes, sir. After a baby flock has been raised
9 and they move to a grow-out house, that bedding
10 material is then moved to the grow-out house. 09:51AM

11 Q Do Cargill contract growers -- are they
12 required to purchase additional bedding material
13 during the grow-out stages?

14 A Sir, that all depends on their management, how
15 often they clean it out, how much bedding material 09:51AM
16 they may need. It is possible that most of their
17 bedding material needs could be met by using the
18 brooder house bedding material when they move it.

19 Q Isn't that -- I'm sorry. Go ahead.

20 A But there is some instances where they may 09:51AM
21 have to buy additional bedding for the grow-out
22 houses.

23 Q Generally speaking, though, the poultry
24 bedding material that comes from the brood house is
25 adequate for the needs of the grow-out house 09:51AM

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1 generally?

2 A Not if you had a complete clean-out of a
3 house.

4 Q You would add some then?

5 A Well, you could store it, you know. They 09:52AM

6 could move the brooder house bedding material to a
7 storage facility, and if they know they're going to
8 clean out a house after their next flock, they could
9 store that brooder house bedding material and then

10 when they -- they could clean the house out as -- 09:52AM

11 and then they move the birds from the brooder house
12 to the next flock, they would have two brooder house
13 volumes worth of bedding material to move to the
14 grow-out house and that may be sufficient that they
15 would not have to buy additional bedding. 09:52AM

16 Q Okay. Is it your understanding, sir, that
17 once the bedding material, the litter, poultry waste
18 is removed from a grow-out house, it's no longer
19 used in the continuous process of growing birds?

20 A From -- I'm sorry, could you ask that one more 09:53AM
21 time?

22 Q From the time that the used poultry litter is
23 removed from the grow-out house and, as you said,
24 it's commonly spread on the land, it is no longer
25 used in the continuous process of growing the birds 09:53AM

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1 at that point; would you agree?

2 A When litter is removed from a grow-out house,
3 it is not used for growing turkeys, no, sir.

4 Q Okay. Would you agree with me that Cargill
5 and the LLC claim to be good stewards of the
6 environment?

09:53AM

7 A Yes, sir.

8 Q What do you understand that to mean?

9 A To being a good steward of the environment?

10 Q Yes, sir.

09:53AM

11 A Following regulations from each state, from
12 federal regulations, trying to recycle, trying to
13 use less paper, recycle many different -- that's a
14 broad question.

15 Q Let me ask you this then to try to narrow it a
16 little bit. Do you understand that that phrase,
17 good stewards of the environment, does that apply to
18 the growing live production processes of Cargill or
19 the LLC?

09:54AM

20 A Yes, sir.

09:54AM

21 Q Okay. So in that context, what do you
22 understand that to mean?

23 A Trying to educate our contract producers,
24 making sure -- giving -- I mean auditing them some,
25 giving them a second set of eyes, trying to help

09:55AM

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1 them if they have any questions or any needs,
2 helping them to utilize their resources to the best
3 that they can.

4 Q Okay. Let me ask you this: Do you understand
5 that Cargill and the LLC claim to be environmentally 09:55AM
6 proactive?

7 A Yes, sir.

8 Q You've heard that before?

9 A Yes, sir.

10 Q Where did you hear it? 09:55AM

11 A About Cargill being proactive?

12 Q Environmentally proactive.

13 A From our management.

14 Q And who would that be?

15 A Tim Maupin. 09:55AM

16 Q Okay. Anyone else?

17 A Steve Willardsen. That's the management I
18 know.

19 Q Okay, and both of them work with Cargill
20 Turkey Production, LLC; is that correct? 09:56AM

21 A Yes, sir.

22 Q Before Cargill Turkey, LLC, was that a phrase
23 that you had heard?

24 A About being proactive?

25 Q Yes, sir. About being environmentally 09:56AM

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1 proactive, is that a phrase that you heard prior to
2 the inception of the LLC?

3 A It is possible. I cannot recall an exact
4 instance if I ever heard that, but I could have.

5 Q As it relates -- and does that term, that 09:56AM
6 phrase relate to the live production of Cargill and
7 Cargill Turkey Production, LLC, to your knowledge?

8 A Yes, sir.

9 Q And tell us what you understand
10 environmentally proactive means. 09:56AM

11 A Staying abreast of the -- trying to stay
12 abreast of issues, trying to gather information,
13 passing that information on to our contract
14 producers, things like that.

15 Q Okay. When you say abreast of issues, what 09:57AM
16 issues would you try to stay abreast of?

17 A Well, that we would attend meetings, seminars,
18 listen to what they're talking about, what new maybe
19 research is going on, listen to state and federal
20 governments, if they have officials there talking, 09:57AM
21 usually or sometimes they talk about what's
22 upcoming, what's on their agenda.

23 Q Okay. I understand that's what you would do.
24 What I want to know is what are the subject of
25 issues that you are trying to stay abreast of? 09:57AM

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1 A Nutrient management plan, environmental laws,
2 CAFO laws, individual state laws, whether they have
3 to have nutrient management plans or not, things
4 like that.

5 Q So would it be fair to say that your term, 09:58AM
6 being abreast of issues, would include being
7 informed or educated about effects that turkey
8 production might have on the environment?

9 A Ask that one more time.

10 Q Your understanding of that term being -- when 09:58AM
11 you use the term abreast of issues and we talked
12 about those issues involving nutrient management
13 plans, environmental types of laws, are you saying
14 that you want to be informed of those, be educated
15 about those laws? 09:59AM

16 A Yes, sir.

17 Q Okay. Would being proactive include taking
18 necessary actions to investigate what might be
19 alleged as problems environmentally with production,
20 the live production? 09:59AM

21 A Sir, if we are approached by a state official
22 or a federal official and there is a problem with a
23 contract producer, they would let us know. They
24 would be the one doing the investigation. They
25 would let us know what appropriate actions need to 09:59AM

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1 be taken.

2 Q Let me ask you this: You said you've read
3 some literature and you attended seminars.

4 A Uh-huh.

5 Q When you read an article that says that an 09:59AM
6 application of poultry litter might cause harm to
7 the water quality, do you do anything to investigate
8 whether that is true or not?

9 A Because -- just because it's an article, no,
10 sir. We rely on the experts. We rely on the 10:00AM
11 states, the federal government, the academia to set
12 standards and practices that would protect water
13 quality.

14 Q And waiting for the states to give you that
15 direction, is that in your opinion being proactive? 10:00AM

16 A Sir, that's following law.

17 Q That's not my question. I understand that,
18 but is it your opinion, sir, that by just following
19 the law, that's being environmentally proactive?

20 A That's part of it, yes, sir. 10:00AM

21 Q Okay. What else is there?

22 A As I've stated before, attending meetings,
23 trying to be educated, looking at new research. All
24 of that is being proactive.

25 Q Let's talk about some of these trade 10:01AM

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1 associations or organizations that you referenced
2 earlier, and let me ask you are you familiar with
3 one referred to as The Poultry Federation?

4 A Yes, sir, I know who The Poultry Federation
5 is. 10:01AM

6 Q Is that organization in Missouri, Arkansas and
7 Oklahoma that involves poultry, turkey or chicken?

8 A I believe they have operations in those three
9 states, yes, sir.

10 Q Okay. Describe what is the nature and extent 10:01AM
11 of any involvement you have or have had with Poultry
12 Federation.

13 A I'm not on the board. They may have been a
14 host of a meeting that I may have attended. The
15 Poultry Federation I believe at times have given out 10:02AM
16 information of what's going on in the different
17 states and stuff like that.

18 Q Are you on their E-mail server notification
19 list?

20 A I don't think so, but I don't know if I am or 10:02AM
21 not.

22 Q Are you familiar with a blog or server list
23 called Poultry Socket?

24 A Oh, yes, sir, yes, sir, yes, sir. I do get --
25 I have before gotten stuff from Poultry Socket. 10:02AM

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1 Q Okay. When do you remember first being on
2 that list to receive those notices?

3 A I do not know when Poultry Socket started.
4 Poultry Socket, I think a gentleman in Missouri does
5 that, and to the best I can recall, it mainly deals 10:02AM
6 with Missouri state government issues.

7 Q You say you're not on the board. Have you
8 ever been on the board with Poultry Federation?

9 A No, sir.

10 Q Have you served on any committees for that 10:03AM
11 federation?

12 A I have been on the turkey committee, yes, sir.

13 Q And what does the turkey committee do; what's
14 its responsibilities?

15 A It hosts an annual meeting. 10:03AM

16 Q And where does it host that meeting?

17 A In the past it's been in Eureka Springs.

18 Q What are the subject matters of that meeting?

19 A Most of the subject matters dealing with -- in
20 that meeting are production issues. What we usually 10:03AM
21 do, try to do a survey and talk to the different
22 companies that are in turkey production, talk about
23 the issues that they are seeing, and we usually get
24 feedback to them -- from them on what they would
25 like to hear at the symposium, and in most cases 10:04AM

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1 veterinarians, academia are our speakers.

2 Q Does that annual meeting have a name?

3 A The Turkey Federation Annual Meeting I believe
4 is the name of the meeting.

5 Q Okay. Does it -- are there any environmental 10:04AM
6 issues discussed and brought forth at those
7 meetings?

8 A I don't recall. There could have been in the
9 past. I don't recall any specifics, no, sir.

10 Q How long have you been attending these 10:04AM
11 meetings, annual meetings for the Turkey Federation?

12 A Since the mid '90's.

13 Q Have you held any offices with that Poultry
14 Federation?

15 A Yes, sir. 10:05AM

16 Q What offices have you held?

17 A I have held the vice-president position and
18 the president position.

19 Q When were you president of that federation?

20 A In '99 or 2000. 10:05AM

21 Q When were you vice-president?

22 A The year before, previous.

23 Q Okay. Any other committees that you've served
24 on besides the turkey committee?

25 A No, sir, not that I'm aware of or not that I 10:05AM

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1 can recall.

2 Q Have you served on a committee called the
3 alternative use committee?

4 A Who hosted that?

5 Q I'm talking about connected with Poultry 10:06AM
6 Federation.

7 A I don't know if -- I do not know if I've
8 served on the committee. I may have attended some
9 of those meetings when they were having them.

10 Q And what time frame would that have been? 10:06AM

11 A That would have been -- I don't know when it
12 started. It could have been late '99 to 2001 or '2,
13 somewhere in that area.

14 Q What was the purpose of the alternative use
15 committee? 10:06AM

16 A Well, it's what it says. It's what can you
17 use poultry litter for. What previously in the
18 past, as previously has been discussed that's been
19 used as a fertilizer, which it does a very good job
20 at, but could it be used as an energy source, could 10:07AM
21 it -- could you make another product out of it.
22 There's a -- that was what the -- the main thing
23 they were trying to do.

24 Q Let me ask you this then: If it works as a
25 good fertilizer, why are you trying to find an 10:07AM

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1 alternative use?

2 A Sir, just because you have it, it has one use,
3 doesn't mean it can't have a dual use, and just a
4 good business model is -- there's nothing wrong with
5 having more than one use for one product. 10:07AM

6 Q Is that the only reason why you would have a
7 different use, looking for a different model?

8 A Well, when that committee started, science had
9 changed; regulations had changed. Nutrient
10 management plans had gone from nitrogen based to 10:07AM
11 phosphorus based. Different standards were being
12 set. In some cases, because of those standards,
13 some areas did have some excess litter. So at that
14 time there was a need or could have been a need for
15 an alternative use. 10:08AM

16 Q With regard to those alternative uses and what
17 you learned in that committee, did you share that
18 information with Cargill or the LLC?

19 A I shared that information with Tim Maupin.

20 Q Anyone else? 10:08AM

21 A No, sir.

22 Q Did you ever work for a company called Rocco,
23 Inc.?

24 A No, sir.

25 MR. GARREN: Let's take a break to change 10:09AM

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1 tapes and we'll come back.

2 VIDEOGRAPHER: We are now off the Record.

3 The time is 10:08 a.m.

4 (Following a short recess at 10:09
5 a.m., proceedings continued on the Record at 10:24
6 a.m.)

7 VIDEOGRAPHER: We are now back on the
8 Record. The time is now 10:23 a.m.

9 Q Mr. Alsup, I want to ask you now about some
10 other associations. Describe the nature and extent 10:24AM
11 of any involvement you've had with the National
12 Turkey Federation.

13 A I have not attended any meetings with the
14 National Turkey Federation. As I've stated before,
15 if they were a sponsor of a seminar that I may have 10:24AM
16 attended, that would be my -- that would be the
17 extent of my association with them.

18 Q You've not -- are you a member?

19 A No, sir, I am not a member.

20 Q Have you ever been on a committee or held an 10:24AM
21 office?

22 A No, sir.

23 Q Are you familiar with an association or a
24 group referred to as the Poultry Water Quality
25 Consortium? 10:25AM

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1 A I have heard of that group.

2 Q When did you first hear of it?

3 A I do not know. I don't recall.

4 Q Have you had any involvement with that group?

5 A No, sir. 10:25AM

6 Q Have you attended any meetings or seminars
7 presented by that group?

8 A I do not know.

9 Q You don't know or you have?

10 A I do not know if I have. 10:25AM

11 Q Do you know a gentleman by the name of Stuart
12 Proctor?

13 A No, sir.

14 Q Do you know a gentleman by the name of George
15 Watts? 10:25AM

16 A No, sir.

17 Q Okay. You referenced earlier the U.S. Poultry
18 & Egg. Were you familiar with that association when
19 it was named differently than that? It's not a
20 test. Let me help you. Do you recall when it was 10:25AM
21 called the Southeastern Poultry & Egg Association as
22 opposed to U.S. Poultry & Egg?

23 A I think that, yes, sir, and -- yes, sir, I
24 think I remember it being that.

25 Q Have you served on any committees or on any -- 10:26AM

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1 in the capacity of any office for that association?

2 A No, sir.

3 Q Have you attended seminars or presentations
4 that were sponsored in whole or part by the U.S.

5 Poultry & Egg? 10:26AM

6 A I believe I have, yes, sir.

7 Q And do you recall when or how many of those
8 types of seminars you might have attended?

9 A No, sir. I don't know how many or the dates,
10 no, sir. 10:26AM

11 Q Are you familiar with an association referred
12 to as the National Poultry Waste Management
13 Symposium?

14 A I think there's a meeting that I have attended
15 that's been called that, yes, sir. 10:26AM

16 Q Okay, and only one meeting or more than one?

17 A It is possible I have attended more than one
18 meeting, yes, sir.

19 Q And do you recall what years you would have
20 attended that symposium? 10:27AM

21 A No, sir, not the exact, no, sir, not the exact
22 dates.

23 Q Do you know how often that symposium presents
24 information to the poultry industry?

25 A I do not know exactly. It could be every 10:27AM

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1 year. It could be every two years.

2 Q Have you ever served on any committee or held
3 any office associated with that symposium?

4 A No, sir.

5 Q Have you ever been a presenter at that 10:27AM
6 symposium?

7 A I believe I have presented at that symposium.

8 Q Do you recall what year that was?

9 A No, sir.

10 Q Let me hand you Exhibit No. 2 and ask you -- 10:27AM
11 I'll represent to you this is just an excerpt from
12 the entire symposium compilation. Do you recall the
13 2004 symposium held in, I believe, Memphis?

14 A I particularly don't remember, but I attended
15 I believe. 10:28AM

16 Q When you get to Page 161, which I believe is
17 the last page of this excerpt, do you see your name
18 on this page?

19 A Uh-huh.

20 Q And do you recall presenting -- making a 10:28AM
21 presentation entitled CAFO Compliance in the Central
22 U.S. at that symposium?

23 A I believe I did talk at that. I don't
24 remember the exact PowerPoint presentation I gave or
25 the presentation I gave. I don't even remember if 10:29AM

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1 it was PowerPoint, but I believe I was there and I
2 did talk, yes.

3 Q Do you recall what it was that you were
4 talking about other than just what this title says?

5 A I believe it was the upcoming federal -- the 10:29AM
6 federal government at that time was looking at CAFO
7 regulation changes, and I believe I was asked to
8 kind of give a recap on the central part of the U.S.
9 and -- in regards to the upcoming CAFO changes if
10 they were made. I don't think they were made yet. 10:29AM

11 I think this was -- they were thinking about
12 changing it.

13 Q Let me ask you this: What did you do to
14 prepare in order to make a presentation at this 2004
15 symposium on CAFO compliance? 10:30AM

16 A Well, I would have had to have talked to some
17 federal officials on what the changes they thought
18 were going to be.

19 Q Did you read any drafts of rules or
20 regulations or laws that were being proposed? 10:30AM

21 A I do not recall. I don't know. It's
22 possible.

23 Q Do you know of anybody else at Cargill or the
24 LLC that have attended the National Waste --
25 National Poultry Waste Management Symposiums? 10:30AM

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1 A I do not know who else would have attended,
2 no, sir.

3 Q At any time or just 2004?

4 A At any time.

5 Q Have you, sir, ever grown poultry yourself; 10:30AM
6 have you ever been a grower?

7 A No, sir, I have not ever been a grower.

8 Q Tell the court, if you would, please, what you
9 know to be Cargill -- let's just start with Cargill,
10 Inc. What do you know to be -- when Cargill, Inc., 10:31AM
11 was conducting the live operations, what were their
12 clean-out recommendations to their contract growers
13 or producers about litter clean-out?

14 A For the grow-out houses --

15 Q Well, both, brooder and grow-out, and we'll 10:31AM
16 start with brooder houses. What's the typical
17 recommendation or requirement Cargill might have for
18 clean-out of the brooder barns?

19 A Typically the recommendation is to remove the
20 litter from the brooder house after the birds have 10:32AM
21 been moved to the grow-out and either move it to the
22 grow-out houses or move it to a storage area to be
23 used at a grow-out house later.

24 Q Okay. So that would be after every flock?

25 A Yes, sir. 10:32AM

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1 Q All right, and after it's moved to the
2 grow-out houses, what is a typical recommendation or
3 requirement of Cargill on clean-out of a grow-out
4 barn?

5 A Clean-out of a grow-out barn, those 10:32AM
6 recommendations have been two to three years.

7 Q When did two to three years become a
8 recommendation?

9 A Sir, as far as I've known -- as long as I've
10 known it, that's been the recommendation. 10:32AM

11 Q Isn't it a fact, sir, that grow-out
12 recommendations have been as short to one to one and
13 a half years to every two years?

14 A If there has been a yearly recommendation for
15 a grow-out house every year, I do not know about it. 10:33AM

16 Q At any time in your job when you were
17 environmental coordinator or now as Precision Ag
18 manager, have you been instructed by anyone in
19 management to determine how much phosphorus should
20 be applied on pastureland generally? 10:33AM

21 A No, sir.

22 Q Have you made that determination on your own?

23 A I am not the expert on -- for the different
24 states and their requirements and all that. I do
25 not write nutrient management plans. We rely on the 10:33AM

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1 State to write nutrient management plans for the
2 contract producers and their own -- at their own
3 facilities.

4 Q Okay. I'm going to ask you the question
5 again. In your capacity as environmental 10:34AM
6 coordinator or Precision Ag manager, have you been
7 instructed by management to determine how much
8 phosphorus should be applied on pastureland
9 generally, and your answer I think was no; correct?

10 A First of all, phosphorus is not in litter. 10:34AM
11 There's phosphate.

12 Q Okay.

13 A But I have conducted no studies for nutrient
14 management plans for the amount of litter to be --
15 that should be applied to farmland. 10:34AM

16 Q Do you know what the constituents -- let me
17 ask it this way: Do you know how many pounds of
18 phosphates are in a ton of poultry litter?

19 A I do not know about broiler litter. Turkey
20 litter, there's roughly 60 to 65 pounds of phosphate 10:34AM
21 in a ton of turkey litter.

22 Q And that would be P205; is that what you are
23 referring to as phosphate?

24 A Yes, sir.

25 Q Do you know whether or not there have been any 10:35AM

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1 actions by Cargill or its employees or others on its
2 behalf to investigate how much P205 should be
3 applied on pastureland generally?

4 A Ask me -- could you repeat that question?

5 Q Yeah. Are you aware of any actions taken by 10:35AM
6 Cargill or its employees or others on its behalf to
7 investigate how much P205 should be applied on
8 pastureland generally?

9 A No, sir. Cargill has not conducted any
10 experiments. 10:35AM

11 Q Do you use the term experiment the same as
12 I've used the term investigate? My question was
13 investigate rather than experiment.

14 A As I interpret investigate, that means to do
15 tests, to do experiments, to -- if your terminology 10:36AM
16 of investigate means relying on the State and
17 federal officials that are the experts, then --

18 Q So you're telling me you understand
19 investigate means to do experiments?

20 A Yes, sir. 10:36AM

21 Q And tests?

22 A Yes, sir.

23 Q All right. Let me ask you this then: Could
24 one do an investigation by simply reading published
25 literature on that same subject? 10:36AM

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1 A No, sir, because that would be just like
2 reading somebody's opinion from who knows -- from
3 the author of that article.

4 Q You don't consider that to be part of an
5 investigation, to determine whether or not facts are 10:36AM
6 true or not?

7 A Sir, the only way I know that if facts are
8 true or not is if scientific tests are done to
9 determine that, not from reading an article that is
10 somebody's opinion. 10:37AM

11 Q What if somebody conducted tests?

12 MR. TUCKER: Let me interpose. I don't
13 know if this is really an objection although it kind
14 of is. Your question is kind of --

15 MR. GARREN: Please, no speaking 10:37AM
16 objections, John. Just make your objection as to
17 form and then we'll move on. You've made your
18 Record.

19 MR. TUCKER: Let me rephrase it. I'll
20 instruct the witness not to answer any questions 10:37AM
21 that are directed to him that say does Cargill do
22 this, does Cargill do that because he's appearing as
23 Tim Alsup, individual witness, and not as Tim Alsup,
24 Cargill witness. If he asks you any questions about
25 Cargill's view, then you're instructed not to answer 10:37AM

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1 those as being outside the scope of that.

2 MR. GARREN: John, that is totally, totally
3 inappropriate and outside the Rules. If I'm asking
4 him a question about what Cargill does or doesn't
5 do, he needs to tell me he doesn't know or he
6 doesn't have knowledge, but my questions to him are
7 as to his knowledge.

10:38AM

8 MR. TUCKER: That's what I was trying to
9 make --

10 MR. GARREN: If you want to coach him,
11 coach him off the Record.

10:38AM

12 MR. TUCKER: You wouldn't let me make it so
13 I'm --

14 MR. GARREN: Well, you've done a good job
15 of coaching. So make your objections as you are
16 required by the Rules. If you want to coach him, do
17 it off the Record.

10:38AM

18 MR. TUCKER: Then ask him questions as you
19 are required by the Rules.

20 MR. GARREN: I can ask him any question I
21 want, John. If you object to the form, that's your
22 objection and that's all you need to say.

10:38AM

23 Q Now, when I'm asking you a question, I'm
24 asking what you know. Do you understand that?

25 A Yes, sir.

10:38AM

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1 Q All right. So do you know whether or not
2 reading an investigation -- reading an article of a
3 scientist who's studied the facts, do you consider
4 that to be investigating whether those facts are
5 true or not, yes or no? 10:38AM

6 A No, sir.

7 Q Okay.

8 A I consider that gathering data.

9 Q As environmental coordinator --

10 MR. TUCKER: Answer the question that 10:39AM
11 you're asked.

12 Q As environmental coordinator, were you
13 requested by management to investigate by reading
14 published literature about what the amount of
15 phosphorus, P205, should be applied on land, pasture 10:39AM
16 such as Bermuda or fescue?

17 MR. TUCKER: Object to the form of the
18 question.

19 A Could you repeat the question one more time?

20 Q As environmental coordinator and your title 10:39AM
21 now as Precision Ag, have you ever been asked by
22 management to investigate by reading published
23 literature how much P205 should be applied on
24 pastureland generally?

25 A Sir, we rely on the state -- there's 10:39AM

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1 regulations and the state -- the people that write
2 the nutrient management plans are the people that
3 determine that. I do not determine that. So there
4 would be no reason for me to read that. I mean
5 there are -- they're the ones that write the plans
6 for our contract producers. I don't. Every state
7 is different, has different set of standards.

10:39AM

8 Q Now, listen to my question carefully. I'm
9 going to repeat it one more time. Have you been
10 asked by management to make any inquiry or
11 investigation by reading published literature as to
12 how much P205 should be generally applied on
13 pastureland?

10:40AM

14 A And, sir, I'm going to tell you again, I --
15 there's no reason for me to read any publication on
16 application of P205 on a field when it's already
17 been done by the nutrient management plan writers.
18 There's no reason to even read that when it's
19 already been done and it's in the nutrient
20 management plan for each individual farm.

10:40AM

21 Q Are you telling me, then, sir, that management
22 has never asked you to read such literature?

23 A I'm saying I do not recall of anybody ever
24 telling me to read that because there's really
25 been -- there's no need to because it's already been

10:40AM

10:41AM

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1 done by the nutrient -- the plan writers that do the
2 nutrient management plans for each state.

3 Q Would you agree with me that a plan writer is
4 writing a plan that's specific to a particular field
5 or fields? 10:41AM

6 A That -- it is my understanding that that is
7 their job, yes.

8 Q Okay. Now, I'm not asking you about a
9 particular field. I'm asking you whether or not
10 people in management at Cargill or Cargill Turkey 10:41AM
11 Production, LLC, have ever asked you in your
12 capacity as environmental coordinator to go and read
13 literature that would tell you how much P205 should
14 be applied.

15 A Sir, there is not -- to my knowledge there's 10:41AM
16 not been any literature -- when you talk about
17 applying to a field, you are talking about a field,
18 and that's what the nutrient management plan writers
19 do. I do not know of literature that there's one
20 standard that applies for all land in all of the 10:41AM
21 United States or in Arkansas or Oklahoma. That does
22 not make sense. There's no scientific basis by
23 that.

24 Q Let me ask it again. Have you been asked by
25 management to do that, yes or no? 10:42AM

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1 A No, no. There's no reason to do that.

2 Q I'm not asking you whether there's a reason,
3 sir. I'm asking you whether or not management has
4 ever told you or asked you to go out and read
5 published literature about how much phosphorus,
6 P205, should be applied on pastureland. Have they
7 asked you to do that, yes or no?

10:42AM

8 A No, sir.

9 Q All right. Has anybody in the management of
10 Cargill or the LLC asked you to determine how much
11 P205 should be applied on pastureland owned by
12 Cargill or LLC?

10:42AM

13 A No, sir. The State of Arkansas that writes
14 the nutrient management plans determines that.

15 Q Have you been -- have you ever made yourself
16 an investigation or conducted a soil test to
17 determine how much P205 should be applied on
18 pastureland owned by Cargill or its entities?

10:43AM

19 A No, sir. The State of Arkansas does that.

20 Q Have you ever conducted a soil test for any --
21 have you ever -- let's put it this way: Have you
22 ever collected samples for a soil test on lands
23 owned by Cargill where poultry litter had been
24 applied?

10:43AM

25 A No, sir, I have not collected soil samples.

10:43AM

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1 Q At any time as your job as environmental
2 coordinator, have you been asked by management to
3 determine if there are any environmental effects
4 from poultry waste running off land generally?

5 A First of all, I don't -- poultry waste -- I 10:43AM
6 don't know what poultry waste is.

7 Q Do you remember when we talked earlier?

8 A Well, sir, just because you agree -- you are
9 interpreting that, I disagree with the term.

10 Poultry litter is not a waste. It's an asset. It's 10:44AM
11 a fertilizer. So because of your terminology of
12 poultry waste, no, there's no poultry waste.

13 Q Let me ask you this then with regard to
14 poultry litter: If you put on ten tons on a single
15 acre, is it still an asset in your opinion? 10:44AM

16 A I have -- I do not write the nutrient
17 management plans.

18 Q You've been --

19 A Now, wait a minute. Hang on a minute. I
20 don't write the -- I have not written nutrient 10:44AM
21 management plans. That's a site-specific question.

22 Q I'll change my question then. I'll withdraw
23 that and ask you this: If you have a soil test on
24 an acre tract of land that shows that the P205 level
25 is 65 pounds, is adding ten tons of poultry litter 10:45AM

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1 to that field considered to be an asset; is the
2 poultry litter considered an asset in that
3 application?

4 A Well, sir, I don't know -- first of all,
5 that's not business practice. Second of all, if you
6 did it, you would probably kill all the forages on
7 the land so there's no reason to even do that. I
8 can't answer that because nobody does that. Nobody
9 puts 10,000 or ten tons of poultry litter on an acre
10 of land.

10:45AM

10:45AM

11 Q How do you know that?

12 A They couldn't sustain any forages if they did
13 that.

14 Q If they're simply wanting to dispose of it,
15 does it matter in your opinion?

10:45AM

16 A Sir, I do not know of any contract producer
17 that disposes of litter. They use litter as in a
18 fertilizer, and following nutrient management plans,
19 they apply it and it's used to grow crops or
20 forages.

10:46AM

21 Q Have you ever been asked by management at
22 Cargill to determine yourself whether there are any
23 environmental effects from runoff from land where
24 poultry litter has been applied?

25 A No, sir, I have done no tests.

10:46AM

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1 Q Other than tests, have you done anything else
2 to determine whether there are any environmental
3 effects of runoff from land where poultry litter has
4 been applied?

5 A Could you repeat that question? 10:46AM

6 Q You said you haven't done any tests. I'm
7 asking you if you've done anything else besides
8 tests to determine whether there are any
9 environmental effects from runoff from land where
10 poultry litter has been applied? 10:46AM

11 A No, sir. We rely on the state and federal
12 officials and their regulations.

13 Q Let me hand you Exhibit 37 and ask you to look
14 at that document and I'll ask you some questions
15 about it. This is an E-mail written by you to Mr. 10:47AM
16 Charlie Delap, Mr. Tim Maupin and Jerry Slagle, is
17 it not?

18 A Terry Slagle, yes.

19 Q I'm sorry, Terry Slagle, and it was written on
20 April 13, 2005 by you; is that correct? 10:48AM

21 A Yes, sir, that is the date.

22 Q And in the first paragraph, you're talking
23 about Charlie Delap. Can you tell us who he is?

24 A He was the breeder manager at that time.

25 Q Breeder manager for where? 10:48AM

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1 A For the Springdale operation.

2 Q And what was his duties and responsibilities
3 as a breeder manager in that operation?

4 A To operate the breeder department.

5 Q Okay. Is that -- I'm sorry. Go ahead. 10:48AM

6 A To operate the breeder department.

7 Q And did that -- are the breeder farms farms
8 owned by Cargill or the LLC?

9 A Yes, sir.

10 Q Do you see in the third line of this first 10:48AM
11 paragraph where it says, and I'll read it, I'm
12 afraid that phosphorus amounts will be extremely
13 high on all farms except Farm No. 6; do you see that
14 statement?

15 A Yes, sir. 10:49AM

16 Q What did you mean by that?

17 A The regulations -- I mean the State of
18 Arkansas was in there changing their laws and how --
19 what they're basing nutrient management plans on. I
20 was told they may even be changing or putting in a 10:49AM
21 phosphorus index, and that's what I was basing the
22 high on is what the regulations could be if the --
23 if they changed that, if they changed the
24 requirements.

25 Q What did you know then -- what did you know 10:49AM

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1 the phosphorus level to be in the requirements that
2 you are referring to?

3 A I didn't know. It was all speculation. I
4 knew that the state legislature and stuff were
5 talking about enacting new regulations, and that 10:50AM
6 was -- that could have been a possibility, that if
7 they lowered thresholds, then -- in relation to
8 those standards, we could have a high test.

9 Q Let me ask you this: Were there any standards
10 in effect in 2005 in Arkansas to lower? 10:50AM

11 A There was a standard in the Eucha-Spavinaw.

12 Q I thought I asked you Arkansas, which is what
13 you referred to.

14 A That is in Arkansas. Eucha-Spavinaw is in
15 Arkansas. 10:50AM

16 Q Okay, all right. Other than Eucha-Spavinaw,
17 is there a standard in Arkansas?

18 A I do not know if there's a threshold limit. I
19 thought they were using a PI, a phosphorus index,
20 which is very -- 10:50AM

21 Q You thought who was?

22 A I think the State is using a phosphorus index
23 to write their plans. I do not know if there is a
24 threshold in that calculation.

25 Q All right. You said that you thought, and I'm 10:51AM

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1 referring to this 2005 statement, that they would
2 lower the threshold. In fact, there was no
3 threshold, except which might have resulted from the
4 Eucha-Spavinaw/City of Tulsa case; is that true?

5 A No, sir. What I said was I didn't know if 10:51AM
6 there was in the phosphorus index, but when the
7 upcoming regulations and changes, they could have
8 inserted a threshold, and I didn't know if they were
9 going to.

10 Q Well, how would you know what is extremely 10:51AM
11 high if you didn't know what the regulation was
12 going to be?

13 A Sir, I didn't say -- I said I'm afraid if the
14 threshold is put in there, that we could have a high
15 phosphorus test, I mean, to the threshold. 10:51AM

16 Q Let me ask you what you understood then: What
17 do you mean by extremely high when you talk about
18 phosphorus amounts; what would that be?

19 A I don't know. That is directly related to
20 what -- if they put in a threshold -- if they put in 10:52AM
21 a threshold of 50, it could have been high. I mean
22 anything above 50 would be high so -- but I don't --
23 that's where that came from. That's why I put that
24 in there, that if there is a threshold put in there,
25 we could have a high soil test. 10:52AM

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1 Q So you didn't know the threshold they were
2 going to use; they could have used 600; would you
3 agree?

4 A They could used -- yeah. I did not know what
5 threshold they were going to use. 10:52AM

6 Q So if it were 600, would you still be afraid
7 that the phosphorus amounts would be extremely high
8 on all farms except No. 6?

9 A I was not -- when I put that in there, I was
10 not expecting a 600 threshold limit, and I did 10:52AM
11 not -- I don't know what number I was expecting, but
12 any threshold, whatever the threshold may have been,
13 we could have had a high phosphorus test.

14 Q Okay, and how would you know whether you could
15 have been high or not if you didn't know what the 10:53AM
16 soil test phosphorus levels were at Farms 1 through
17 5?

18 A They -- they would have done when we do -- we
19 were going to do a new nutrient management plan.
20 They would have done a new soil test then. 10:53AM

21 Q When would that be?

22 A When would what be?

23 Q Did you know about it in April of 2005, about
24 a new soil test?

25 A Any time you get a new nutrient management 10:53AM

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1 plan, they do a new soil test.

2 Q Let me ask you: Did you have a new soil test
3 in April of 2005?

4 A No, sir.

5 Q Okay. Let me ask you: Did you know in April 10:53AM
6 2005 what the soil test phosphorus levels were on
7 any of the farms, 1 through 5?

8 A No, sir.

9 Q Have you seen the nutrient management plans
10 for Farms 1 through 6 before April 2005? 10:53AM

11 A It is possible I could have seen them.

12 Q Okay, and is it possible that you ever saw the
13 soil test phosphorus reports for any of those farms
14 at any time prior to 2005 when you wrote this
15 E-mail? 10:54AM

16 A I do not recall that, no, sir. I have never
17 been over the breeder operations, so I do not recall
18 seeing that.

19 Q You've never been what; over the breeder
20 operations? 10:54AM

21 A I've not been over the breeder -- I have not
22 been a breeder manager. That's what I'm trying to
23 say.

24 Q But you had an opinion today or I'm sorry, the
25 day you wrote this in April of 2005 that I'm afraid 10:54AM

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1 the phosphorus amounts will be extremely high on all
2 farms except 6, how would you know that?

3 A Speculation. I was just -- sir, this was back
4 when we were doing the business of moving litter to
5 Kansas. When you sit back and you listen to the
6 State, you know regulation changes could be coming.
7 You don't want to wait until the last minute. You
8 don't want to plan -- not plan for something that
9 could happen a year or two and not have a solution

10 for it. That's the crux of this whole E-mail is if

10:54AM

11 there's a regulation put in in the state of

10:55AM

12 Arkansas, if there's a threshold limit in there, if
13 they change the way nutrient management plans are,
14 the application rates, any of that, we may need to

15 look at other alternatives to move the litter that's

10:55AM

16 being produced on the breeder farms to another

17 location. That's the whole crux of this whole

18 E-mail right here.

19 Q Who is responsible for keeping the records
20 relating to the nutrient management plans for the
21 breeder farms Cargill owns and operates?

10:55AM

22 A The breeder manager.

23 Q Is that the same person that's responsible for
24 maintaining sufficient records to determine the
25 utilization of poultry litter?

10:56AM

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1 A Could you ask that question --

2 Q Is the breeder manager also required to
3 maintain sufficient records at the site of the
4 breeder farms to determine poultry litter
5 utilization in compliance with the laws of the State 10:56AM
6 of Arkansas?

7 A He has -- they have a nutrient management plan
8 that determines application rates if that's what
9 you're asking.

10 Q No. I've already asked that and you answered 10:56AM
11 it. What I'm asking you, does he also maintain at
12 that site any other records that are required by the
13 State of Arkansas to show and determine poultry
14 litter utilization in compliance of those laws?

15 A I do not know. 10:57AM

16 Q Are you familiar with the Oklahoma and/or
17 Arkansas cooperative extension services?

18 A I don't know the individuals. I'm aware of
19 the organizations, yes, sir.

20 Q And are you aware that it's associated with 10:57AM
21 the U.S. Department of Agriculture?

22 A No, sir.

23 Q Have you had -- let me ask you this: What is
24 the nature and extent of any involvement or
25 experience you've had with a state cooperative 10:58AM

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1 extension service representative?

2 A To my knowledge the extension service in both
3 states are there used as a resource for farmers or
4 individuals who may need different or need
5 information, anything from growing forages, crops, 10:58AM
6 gardens, lawns, canning vegetables. I think they do
7 a number of different things. I don't know exactly
8 all what they do, though.

9 Q Are you familiar with the fact sheets,
10 bulletins or brochures that are published by either 10:58AM
11 the State of Oklahoma or the Arkansas cooperative
12 extension services?

13 A I believe I have seen some sheets, some
14 information that has come from their offices, yes.

15 Q Let me hand you Exhibit 27 and ask you if 10:58AM
16 you've seen that document.

17 A Okay.

18 Q Do you recall my question?

19 A No, sir.

20 Q Have you seen this document before? 11:01AM

21 A I don't recall it, but it is possible I could
22 have seen this document before.

23 Q Are you familiar with any or all of the
24 information or -- let me ask this way: Are you
25 familiar with any of the information that might be 11:01AM

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1 contained within this document, having now looked
2 through it?

3 A Well, sir, I glanced at it. If you want me to
4 read it, I'll read it all, but I can't answer that
5 question without reading every page. 11:01AM

6 Q Do you have any idea when it was published?

7 A No, sir.

8 Q Do you have any idea when you might have first
9 seen it?

10 A No, sir. 11:01AM

11 Q Is this the kind of publication that you would
12 expect to see in the poultry growing operation if
13 you're an environmental coordinator?

14 A This -- it looks like this came from -- this
15 could be something that was given to contract 11:01AM
16 producers.

17 Q Do you know whether it was or not?

18 A No, sir, I do not.

19 Q Who would know?

20 A The person who put the book together I guess 11:02AM
21 would know and would know why they did it.

22 Q Do you see at the bottom of the very first
23 page of this document it's titled dry poultry manure
24 management; do you see that? I'm sorry, the cover
25 sheet. Look at the very first page. It says dry 11:02AM

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1 poultry manure management, does it not?

2 A Yes, sir.

3 Q Turkeys create dry manure, do they not?

4 A Yes, sir.

5 Q That's how it's normally referred to; correct? 11:02AM

6 A Uh-huh.

7 Q And it says at the very bottom it's a

8 cooperative extension service, University of

9 Arkansas, United States Department of Ag and county

10 governments cooperating; do you see that? 11:02AM

11 A Yes, sir.

12 Q All right. Is this something that Cargill

13 would use or utilize in its live operations?

14 A Cargill may have it as a copy of it to use as

15 a resource for a contract producer but -- if that's 11:03AM

16 what you're talking about as maybe a resource of

17 information.

18 Q All right. I'll ask you to look at Bates

19 number Page 16326 in the lower right-hand corner, if

20 you'll go to that page, please, 16326. Do you see 11:03AM

21 the first paragraph under environmental concerns?

22 A Yes, sir, I see it.

23 Q Do you see where it says in the second

24 sentence, the ultimate concern is to avoid bacterial

25 contamination and excess nutrients in ground and 11:03AM

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1 surface water; do you see that sentence?

2 A Yes, sir, I see that.

3 Q And the next sentence says, poultry producers
4 must handle manure in ways that protect water
5 resources; do you see that? 11:04AM

6 A Yes, sir, I see that.

7 Q And do you personally believe those are
8 accurate statements?

9 A Well, sir, litter is applied by -- with a
10 nutrient management plan, and nutrient management 11:04AM
11 plans are done with the State. I can't imagine a
12 nutrient -- if you're following your nutrient
13 management plan, that they would intentionally write
14 a nutrient management plan that would harm water
15 quality. 11:04AM

16 Q Let me read the sentence again. It says,
17 poultry producers must handle manure in ways that
18 protect water resources; do you see that statement?

19 A Yes, sir.

20 Q And do you agree with that statement? 11:04AM

21 A If they are using their nutrient management
22 plan, they are handling litter in a way that
23 protects water quality.

24 Q What was the first year that Cargill growers
25 in Arkansas other than the Eucha-Spavinaw were 11:05AM

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1 required to have nutrient management plans?

2 A The state regulations, when did the state
3 regulations -- I don't -- I don't know. The State
4 required them to get one? Maybe in '06. It would
5 have been in '06, '07 maybe.

11:05AM

6 Q Now, prior to that, if they didn't have a
7 nutrient management plan, would you agree with that
8 statement, poultry producers must handle manure in
9 ways to protect water resources?

10 A If you're handling -- if you're using BMPs and
11 your nutrient management plan, you are protecting
12 water resources.

11:05AM

13 Q Listen to my question, please. I said before
14 nutrient management plans were required by Arkansas,
15 would you agree this statement would be an accurate
16 and truthful statement on what poultry producers
17 should do?

11:05AM

18 A If they're utilizing the nutrients in a proper
19 way, yes, sir, they are protecting water resources.

20 Q And in 2002 when you became environmental
21 coordinator, did you know manure can contaminate
22 water by leaching through shallow soils, fractured
23 rock or limestone formations?

11:06AM

24 MR. HIXON: Object to the form.

25 A I -- sir, I am not an expert on geology or

11:06AM

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1 anything like that, so I -- I wouldn't know that.

2 Q Okay. You're telling the court you didn't
3 know that was either true or not true; is that what
4 you're saying?

5 A No, sir. I said I wouldn't know that. That's 11:06AM
6 a site-specific question. I'm not an expert in
7 that. I wouldn't -- I don't know.

8 Q Did you in 2002 as environmental coordinator
9 understand or know that manure can contaminate water
10 by running off from areas where manure has been 11:06AM
11 improperly stored or misapplied; did you know that
12 in 2002?

13 A If litter is stored improperly, yes, there
14 could be some runoff if enough moisture falls on it.

15 Q And, likewise, if it were misapplied, could it 11:07AM
16 run off?

17 A Sir, there -- I do not know that because that
18 is a site-specific question. I did not know what
19 misapplied means. That would be different for what
20 the nutrient management plan says and that would be 11:07AM
21 different for each site. So I have no idea.

22 Q Let me ask it this way: If somebody applies
23 it not in compliance with their nutrient management
24 plan, do you believe that it can run off?

25 A If they do not apply it following BMPs and 11:07AM

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1 following their nutrient management plan, there
2 could be an increased risk of some runoff.

3 Q In 2002 as environmental coordinator -- let's
4 have you look at Page 16327, the next page under
5 health concerns. 11:08AM

6 A Okay.

7 Q First sentence, it says, all animals -- or the
8 first two sentences actually, first paragraph, all
9 animal manures are a potential source of
10 disease-causing organisms. These pathogens can 11:08AM
11 infect humans through contact with a contaminated
12 water source; do you see that statement; did I read
13 that correctly?

14 A Yes, sir, you read that correctly.

15 Q Were you aware of that potential in 2002? 11:08AM

16 A No, sir, I was not aware of that potential.

17 Q Do you know whether anybody in Cargill was
18 aware of that potential that's discussed here in
19 this manual?

20 A No, sir. 11:08AM

21 Q Was that ever discussed in any of your
22 meetings in Cargill?

23 A No, sir. We have seen no health issues
24 resulting from any contact with poultry litter with
25 any of our contract growers, with any of our 11:08AM

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1 employees, so there is no need to discuss -- to
2 discuss that when it's not happening.

3 Q When you say you don't see that, let me ask
4 you, sir, what have you done to look for it, whether
5 you or Cargill to your knowledge has done to look
6 for health concerns relating to the application of
7 poultry manure?

11:09AM

8 A If there would have been health -- if there
9 would have been health issues, it would have been
10 reported to us.

11:09AM

11 Q Let me ask you again, sir, what did you or
12 anybody in Cargill to your knowledge do to determine
13 whether there are any health concerns from poultry
14 manure?

15 MR. TUCKER: Object to the form of the
16 question.

11:09AM

17 MR. GARREN: Let me restate it because I
18 think I left a phrase off.

19 MR. TUCKER: I know you didn't do it on
20 purpose. I just want to object.

11:09AM

21 Q With regard -- again, either you personally or
22 your knowledge of anybody in Cargill, what did they
23 do to determine whether or not there are any health
24 concerns from poultry manure that's been land
25 applied?

11:10AM

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1 A To my knowledge Cargill has not done any tests
2 in regard to human health con -- to see if there was
3 any health issues with contact with poultry litter.

4 Q Let me hand you Exhibit 28 and ask if you've
5 ever seen a document like this before. 11:10AM

6 A No, sir, I do not recall seeing this
7 particular document.

8 Q Are you familiar with the term best management
9 guidelines for land application of dry poultry
10 litter? 11:11AM

11 A I do understand what BMPs mean, yes, sir.

12 Q Okay. Does this appear to be a document
13 prepared by the cooperative extension service out of
14 the University of Arkansas?

15 A Their title is at the top of the page, yes, 11:11AM
16 sir.

17 Q Okay, and it says Information Article 1-92.
18 Do you know when this was published?

19 A No, sir.

20 Q Looking at the seven items on this first page, 11:11AM
21 do those appear to be best management guidelines as
22 far as you know? Does this appear to be a list of
23 best management guidelines?

24 A Yes, sir. If you'll let me finish reading it,
25 I'll answer. 11:12AM

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1 Q Referring only to the first page at this time,
2 would you agree that since it's titled best
3 management guidelines, this appears to be a list of
4 them?

5 A It would be some recommendations, yes, sir. 11:13AM

6 Q And let me ask you, sir, when did you in your
7 capacity, in any capacity as Cargill or Cargill
8 Turkey, LLC, inform any of its growers to use best
9 management practices?

10 A Meetings were starting to be held by the 11:13AM
11 states in the late '90's, and we helped facilitate
12 some of those meetings about helping getting the
13 growers to the meetings or getting them information
14 from the states. That would probably have been the
15 first time that I could recall BMPs would have been 11:13AM
16 talked to with growers.

17 Q Let me ask you again, when did you or anybody
18 at Cargill inform its growers that BMPs should be
19 followed?

20 A Well, sir, it's always the contract that we 11:14AM
21 have our contract growers have always stated that
22 following all state, federal, local regulations and
23 laws, but do I know the exact date when Cargill
24 started using BMP practices, no, sir, I do not
25 recall that. 11:14AM

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1 Q Do you recall when Cargill informed its
2 growers they must use best management practices?

3 A Well, sir, must -- we have never told them
4 they must. We don't have that control over them.
5 We've recommended in the past that they use BMPs
6 from each state.

11:15AM

7 Q I'm asking when you first made that
8 recommendation then.

9 A I do not know; I do not know.

10 Q Let me hand you Exhibit No. 19 and ask you if
11 you've seen that document before.

11:15AM

12 A Okay. What was the question?

13 Q Have you ever seen this document or parts of
14 it before?

15 A I think I've seen parts of it before.

11:17AM

16 Q Did you have anything to do with the creation
17 of any or all of this document?

18 A I do not recall, but it is possible that I
19 could have been part of it.

20 Q It's possible? Do you recall what part you
21 might possibly have been involved with?

11:17AM

22 A It's possible I could have done the
23 environmental farm audit part of it.

24 Q What page are you looking at, in the lower
25 right-hand corner, the Bates number?

11:18AM

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1 A 101104.

2 Q Would that include the following page, 105,
3 also?

4 A Yes, sir, it's possible. I don't know.

5 Q Is there any other portion of this document 11:18AM
6 you might have been responsible for the creation of?

7 A 101106 maybe.

8 Q Do you recall how this document was presented?

9 This appears to me to be slides in a PowerPoint
10 presentation. Does it also to you? 11:19AM

11 A Yes, sir, it appears to be a PowerPoint
12 presentation.

13 Q It's not unusual for Cargill or Cargill Turkey
14 Production, LLC, to make similar types of
15 presentations using PowerPoint or some similar 11:19AM
16 software; is that true?

17 A Yes, sir. To groups they usually use
18 PowerPoint.

19 Q All right. Look at Page 101086. It says at
20 the top, EPA CAFO rule; do you see that? 11:20AM

21 A Yes, sir.

22 Q Now, you talked about earlier you made a
23 presentation in 2004 to the National Waste --
24 Poultry Waste Symposium. Do you remember that?

25 A Yes, sir. 11:20AM

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1 Q All right, and is this what you were talking
2 about, the EPA CAFO rule?

3 A To my recollection, I don't know if -- I think
4 what that was was when the CAFO regulations were
5 being looked at and being changed, and I had central 11:20AM
6 by my name, I was to give report on how the states
7 in the central part of the United States were going
8 to interpret the possible changes in the CAFO regs.
9 I do not remember if this was part of it or not.

10 Q Looking at the fourth bullet point down, it 11:20AM
11 says, the EPA believes that agriculture contributes
12 to 59 percent of river impairments and 31 percent of
13 lake impairments in the U.S.; did you see that
14 statement?

15 A Yes, sir, I do see that statement. 11:21AM

16 Q And did you or anyone at Cargill ever
17 investigate whether or not poultry was contributing
18 to the numbers set forth on this slide?

19 A Well, sir, I do not know where that came from.
20 From what I see right here, I assume that that would 11:21AM
21 have come from somebody in EPA. I don't know. How
22 they arrived at that, I don't know.

23 Q My question has nothing to do with what EPA
24 did. I'm asking, what did you or Cargill do to
25 determine whether or not its poultry operations 11:21AM

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1 might have been contributing to the numbers cited
2 here as agriculture?

3 MR. TUCKER: Object to the form of the
4 question as it relates to Cargill but not as to Mr.
5 Alsup. 11:22AM

6 A I have done nothing to determine whether that
7 statement or any part of that statement is true.

8 Q Look at the next page, 1087. It says EPA CAFO
9 rule again. It says that a 406-page document was
10 released on December 16th, 2002. That's at or about 11:22AM
11 the time you were environmental coordinator. Did
12 you ever look at any EPA document dealing with the
13 CAFO rule at or about that time?

14 A It is possible but -- I know definitely I've
15 not read a 406-page document regarding CAFO 11:22AM
16 regulations.

17 Q Did you or others prepare this slide that says
18 regulation will affect turkey operations due to
19 elimination of dry litter exemption?

20 A Ask that question one more time. 11:22AM

21 Q Did you or others prepare this slide that says
22 regulation will affect turkey operations due to
23 elimination of dry litter exemption?

24 MR. TUCKER: Object to the form of the
25 question as far as others is concerned. 11:23AM

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1 A Sir, I don't -- I do not believe I did this
2 slide.

3 Q Do you know if others did?

4 A Well, sir, if you have it in front of me, you
5 found -- it was given to you from somewhere, but I 11:23AM
6 don't know who.

7 Q Do you know who did it?

8 A No, sir.

9 Q Do you remember this presentation being made?

10 A No, sir. 11:23AM

11 Q Do you have any -- in your opinion, who would
12 most likely have been the person to have made such a
13 presentation?

14 A Not knowing who did it, I would have to guess
15 that Tim Maupin may have made this presentation. 11:23AM

16 Q Do you know how much poultry waste or litter
17 is produced in a breeder farm operation either on a
18 flock or an annual basis?

19 A Actual numbers, no, I do not have that.

20 Q Who would most likely be the person in Cargill 11:24AM
21 that would know generally how much poultry litter is
22 produced within the breeder farm operations, either
23 individual farm or collectively?

24 A Nobody would have a record in Cargill of
25 actual amount of litter from a breeder farm. 11:24AM

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1 Q Does -- is it my understanding, though, that
2 Cargill has land applied poultry litter from its
3 operations on the land that surrounds those barns?

4 A Cargill has applied land or has applied litter
5 to Cargill-owned land, yes, sir. 11:25AM

6 Q And the person that did that, is it a contract
7 person or somebody who is employed by Cargill?

8 A For the most part, it would have been a
9 contract person.

10 Q And was that person paid to do that work for 11:25AM
11 Cargill?

12 A I believe at some point in time Cargill was
13 paying a contractor to come clean the houses, the
14 breeder houses.

15 Q And were they paid on an hourly basis or were 11:25AM
16 they paid by ton or per load that was removed from
17 those barns?

18 A I believe it was a set payment. I do not
19 believe it was by load, by ton or by hour. I think
20 it was -- but I do not know that. I don't know. 11:26AM

21 MR. GARREN: Let's take a break. We have
22 to change tapes.

23 VIDEOGRAPHER: We are now off the Record.
24 The time is now 11:25 a.m.

25 (Following a lunch recess at 11:26 11:26AM

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1 a.m., proceedings continued on the Record at 12:34
2 p.m.)

3 VIDEOGRAPHER: We are now back on the
4 Record. The time is now 12:34 p.m.

5 Q Mr. Alsup, we were looking at a document, 12:34PM
6 Exhibit 19. I'd like to ask you to look at Page
7 10189. In this slide presentation there's a
8 statement CNMP. Do you know what that stands for?
9 Is it comprehensive nutrient management plan?

10 A Yes, sir, I believe that's -- 12:35PM

11 Q It then reads, CNMP will be voluntary unless
12 you are deemed a risk for water pollution in your
13 watershed; did I read that correctly?

14 A Yes, sir, you did read it correctly.

15 Q What was Cargill referring to when they said 12:35PM
16 you're deemed a risk for water pollution?

17 A I do not believe this was Cargill's words. I
18 believe at that time when they were CAFOs -- the
19 federal government was setting up CAFOs, they were
20 going to use certain animal units as standards to 12:35PM
21 put you in whatever tier they were going to put you
22 in, but that wording was also put in there to give
23 them room that, if there were other circumstances
24 that even though you may have had 300 animal units,
25 they could call you a CAFO and make you follow those 12:36PM

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1 rules that they were thinking about changing.

2 MR. TUCKER: I don't want to cause trouble
3 but --

4 Q That's your interpretation of what the EPA was
5 doing; nothing about Cargill is what you are telling 12:36PM
6 me; correct?

7 MR. TUCKER: It's pretty scary, you're
8 reading my mind.

9 A Yes.

10 Q Okay. Now, do you know who prepared this 12:36PM
11 slide presentation and used these words?

12 A No, sir.

13 MR. TUCKER: It's bad sign, Rick.

14 Q Looking at 104, the page you said you
15 contributed to, it says, environmental farm audits 12:37PM
16 at the top. Now, you contributed to this slide; is
17 that correct?

18 A It is possible that, yes, sir, I contributed,
19 yes.

20 Q It's possible? 12:37PM

21 A Yes, sir.

22 Q All right. Now, who was the target audience
23 for this slide presentation Cargill made in this
24 exhibit?

25 A Sir, the way it -- the way it looks like when 12:37PM

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1 you read the whole document, it could have been to
2 Cargill management or personnel or this could have
3 been given to a contract grower, contract growers in
4 a meeting that we may have had with them.

5 Q You don't recall which one that was?

12:37PM

6 A No, sir.

7 Q Is it possible it was given to both of them?

8 A It could have been possible, yes, sir.

9 Q All right. Let me hand you what's been marked

10 as Exhibit 17 and see if you can identify that

12:38PM

11 document. You only need to look at the first page.

12 They're all identical, I mean the same form, just

13 different fill-ins. Can you tell me, is that the

14 farm audit that's referred to in Exhibit No. 19

15 that's in front of you?

12:38PM

16 A Yes, sir.

17 Q And this is the document that based on this

18 slide the purpose was to give uniform feedback twice

19 a year to all Cargill producers about environmental

20 concerns; is that correct?

12:38PM

21 A Yes, sir.

22 Q All right, and so it's the form that's Exhibit

23 17 in your right hand, that's the form that's going

24 to give feedback to a Cargill producer; is that what

25 you're saying?

12:38PM

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1 A Yes, sir.

2 Q All right, and when you say twice a year, how
3 does that occur?

4 A To my knowledge, it has occurred.

5 Q Okay. When it's occurred, how does it occur? 12:38PM
6 You just fill out the audit form or is there
7 something more done?

8 MR. TUCKER: I think I object to the form
9 of the question because I'm unclear as to who you is
10 in the question. 12:39PM

11 Q Okay. Let me ask him, who gets the feedback
12 twice a year from the farm audit?

13 A The -- who -- ask that question one more time.

14 Q Okay. Look at this exhibit, first sentence.

15 A Uh-huh. 12:39PM

16 Q I'm trying to understand in that who is to
17 receive the uniform feedback twice a year?

18 A The contract producer.

19 Q Okay. How is that contract producer supposed
20 to receive it? 12:39PM

21 A To my knowledge the flock supervisor fills it
22 out when he visits the farm. He reviews it with the
23 contract producer. Both of them sign it, and I do
24 not know if -- I know one form comes back in to the
25 production manager. The contract producer may also 12:40PM

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1 get a copy, but I do not know that.

2 Q So the form, the audit form, which is Exhibit
3 No. 17 on the left side over there, that's done
4 twice a year as I understand the statement?

5 A Yes, sir. 12:40PM

6 Q What time of year is that done?

7 A I do not know the exact times of years that
8 that is done. Every six months, but I do not know
9 the exact time, no, sir.

10 Q Going back to Exhibit 19, the next page, 105, 12:40PM
11 it says, issues to be or issues addressed, and one
12 of the second point, litter disposal and handling.
13 What is that intended to mean, litter disposal and
14 handling?

15 A Litter management. 12:41PM

16 Q And that litter management is in the house or
17 outside the house or both?

18 A Both.

19 Q And the flock supervisor is responsible for
20 advising the contract grower about litter disposal 12:41PM
21 and handling?

22 A No, sir. They are just there -- this is
23 just -- this audit form is just a second set of eyes
24 that --

25 MR. TUCKER: Could you clarify what you 12:41PM

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1 mean when you say this audit form because you --

2 A I'm sorry.

3 Q Exhibit No. 17.

4 A Exhibit 17 --

5 Q Uh-huh. 12:41PM

6 A -- is just used as feedback for our contract
7 producers. It's another set of eyes. When a
8 contract producer comes on their farm, they ask
9 these questions. Some of these are asked questions.

10 Some of these are observations that a contract 12:41PM

11 producer may or may, being there, working there,
12 living there every day, may overlook or whatever
13 issue that may come up or if there's no issues, and
14 this is just to use as another set of eyes as
15 feedback for our contract producers. 12:42PM

16 Q So the feedback is what; what's written on
17 that form?

18 A Yes.

19 Q Or what may be expressed verbally or both?

20 A What is written on the form. 12:42PM

21 Q Okay. So other than what's written on the
22 form, the flock supervisor gives no other feedback;
23 is that what you're telling me?

24 A No, sir.

25 Q Let me -- we have a double negative there, so 12:42PM

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1 let's try that again. Does the flock supervisor
2 give verbal feedback to the producer grower?

3 A The verbal feedback would be sitting down with
4 producer, reading this, telling the contract
5 producer what was filled out. That would be the 12:43PM
6 verbal feedback.

7 Q That which is shown on Exhibit 17?

8 A Yes, sir.

9 Q And that's done twice a year according to this
10 Exhibit 19 slide? 12:43PM

11 A It should be done twice a year.

12 Q Where -- when did the farm audits go into
13 play, start being used?

14 A I don't know the exact date.

15 Q Who drafted the form that creates the form 12:43PM
16 audit, the farm audit that we see, Exhibit 17?

17 A Is your question who --

18 Q Who created that form?

19 A That would be me.

20 Q And do you remember when you did that? 12:43PM

21 A No, sir.

22 Q At whose request did you create that form?

23 A Tim Maupin.

24 Q What happens to the Exhibit No. 17 audit form?

25 Obviously it's back in Cargill's hands because they 12:44PM

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1 produced it in this case. Where is the form kept?

2 A I believe it to be kept at the production
3 manager's office.

4 Q And in this time frame who would that be,
5 2002, 2003? 12:44PM

6 A I believe Jim Moore would have been the
7 production manager at that time.

8 Q Do you know how long he keeps these forms?

9 A No, sir, I do not.

10 Q Does he have instructions from you or others 12:44PM
11 how long to keep the forms?

12 A I do not know of any instructions on how long
13 to keep the forms, no, sir.

14 Q All right. As environmental coordinator, is
15 this a form that you would look at and use in your 12:45PM
16 work?

17 A Only if there was -- only if they needed help.

18 Q They being who?

19 A The flock supervisor. Only if they had
20 questions maybe about filling it out or relating it 12:45PM
21 to the growers. That would be where I would be
22 involved, yes, sir.

23 Q Well, did you train anybody on how to use this
24 form?

25 A We -- in a group meeting -- in group meetings 12:45PM

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1 we did talk about how to fill it out, yes.

2 Q And who was in that group meeting?

3 A The flock supervisors.

4 Q And was it just you doing it or was it

5 somebody other than you in the way of management

12:45PM

6 assisted in that instruction?

7 A I do not recall everybody that was in it. I

8 was involved in some of them. Tim Maupin would have

9 been involved.

10 Q And you don't have any recollection of the

12:46PM

11 earliest date for use of this farm audit?

12 A No, sir, I don't recall when I actually did

13 this report.

14 Q Go back to Exhibit 19 and go to the next page,

15 106, under new initiatives. Did you have anything

12:46PM

16 to do with preparation of this document?

17 A I could have. This looks like something that

18 Tim Maupin may have done, though.

19 Q It shows in the third bullet point Precision

20 Ag partnership with Cargill Crop Nutrition. Do you

12:47PM

21 know what that is?

22 A Yes, sir. That is our Precision Ag business

23 that we were trying to get started at that time.

24 Q That's the one you talked about earlier that

25 started in 2002 and ended in 2004; correct?

12:47PM

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1 A Yes, sir.

2 Q And the source of the poultry waste that was
3 used for that program came where, from where?

4 A No poultry waste was used.

5 Q What was used? 12:47PM

6 A Poultry litter.

7 Q Okay. Look at Exhibit 2, if you would,
8 please. Read the heading at the top of that
9 document.

10 A National Poultry Waste Management Symposium. 12:47PM

11 Q What do you know or understand the term waste
12 to mean in that document that's used in that
13 consortium or symposium?

14 A Sir, I did not write that, and I do not know
15 what they meant by that. 12:48PM

16 Q You don't know what poultry waste means?

17 A I know what poultry litter means. I know
18 that --

19 Q Sir, just my question is --

20 MR. TUCKER: Excuse me. Let's let him 12:48PM
21 finish.

22 MR. GARREN: Well, if he would answer the
23 question, John, instead of giving these pat answers.

24 MR. TUCKER: Let's don't interrupt him.

25 MR. GARREN: Well, he needs to listen to

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1 the question.

2 MR. TUCKER: Maybe you need to listen to
3 his answer.

4 MR. GARREN: Well, he doesn't answer the
5 question, John.

12:48PM

6 MR. TUCKER: Maybe you don't ask the
7 question. Let him finish his answers and we'll get
8 along a whole lot better.

9 Q Tell me, sir, are you familiar with the law of
10 the State of Oklahoma as it pertains to your Cargill
11 contract growers in the handling of poultry?

12:48PM

12 A I cannot tell you all the Oklahoma state laws,
13 no, sir. I do not know the exact laws that the
14 State of Oklahoma have.

15 Q Do you know that the State of Oklahoma defines
16 poultry waste essentially as the same thing as you
17 referred to as poultry litter in their statutes?

12:48PM

18 A No, sir, I did not know that.

19 Q Have you read that statute to know?

20 A I may have read it in the past, but I don't
21 recall that.

12:49PM

22 Q Okay, and you're telling me today, sitting
23 here under oath, you have no -- and you gave a
24 presentation in 2004 at this symposium. You don't
25 know what they mean by poultry waste?

12:49PM

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1 A Well, sir, it depends on the -- if you ask me
2 back in 2001, 2002, does that word mean any
3 difference, no. Today, because of the lawsuit and
4 terminology and everybody taking things literally,
5 poultry litter is not a waste. I do not consider 12:49PM
6 poultry litter a waste, and that is why I disagree
7 with your terminology when you say that.

8 Q I didn't ask you that question. Please
9 listen. Do you, sir, know, in 2004 what they meant
10 by the term poultry waste that's used in the name of 12:49PM
11 that symposium; yes or no, do you know?

12 A It could have been poultry litter. It could
13 have meant poultry litter.

14 Q You're guessing now or do you know?

15 A Sir, I didn't write this. 12:50PM

16 Q I didn't ask who wrote it.

17 A I don't know who wrote it. I wasn't the
18 author of this. You're asking me to interpret what
19 they meant.

20 Q That's exactly what -- 12:50PM

21 A How do I know that?

22 Q When you read that term and you read it in
23 2004 when you attended that, what did you understand
24 that term to mean?

25 A That could have been from processing plants. 12:50PM

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1 It could be -- it could be a myriad of things. It
2 could have meant -- from this author, it could have
3 been poultry litter. I don't remember seeing
4 the whole agenda, but there may have be processing
5 plant talks in there.

12:50PM

6 Q Do you know that as the title of that
7 symposium that's been used since 1988 to present?

8 A I think it has been the title of that
9 symposium.

10 Q And you're telling me you don't understand
11 what it means?

12:51PM

12 A Sir, no. What you asked me was to interpret
13 what they meant by that. I don't know. It could be
14 poultry litter.

15 Q Let me hand you what's been marked as Exhibit
16 No. 22 and ask you if you've seen that document.
17 Have you seen enough of this document to identify
18 it, sir?

12:51PM

19 A It looks like it's talking about the
20 educational programs.

12:52PM

21 Q Did you look at the last page of the document?

22 A No, sir. I was still reading the first page
23 of the document.

24 Q Look at the last page for a second to see if
25 that helps refresh your recollection. Does that

12:52PM

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1 appear to be a document you authored?

2 A Let me finish reading the second page and I
3 can tell you. Okay. Looks to be as a survey that I
4 filled out.

5 Q Look at the first page of the document, if you 12:53PM
6 would, please, and read the title into the court
7 Record.

8 A This?

9 Q The title.

10 A Environmental practices survey, National 12:53PM
11 Turkey Federation, April 15th, 1998.

12 Q This document has your name at the last page
13 as a grow-out manager. Is that the time you were
14 grow-out manager?

15 A Yes, sir. 12:53PM

16 Q So April of 1998 you were asked to prepare a
17 response to a survey by the National Turkey
18 Federation; is that fairly accurate?

19 A I believe that to be true, yes, sir.

20 Q And in doing that, you were asked to summarize 12:54PM
21 how your company is addressing environmental issues
22 in certain areas; do you agree with that? Read the
23 first sentence of the document and maybe that will
24 help.

25 A Yes, sir, that's what the first sentence says. 12:54PM

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1 Q Under the heading educational programs, the
2 first sentence there says, a three-hour program has
3 been conducted for our contract producers, as well
4 as other companies that are in the Eucha-Spavinaw
5 watershed; do you see that sentence? 12:54PM

6 A Yes, sir.

7 Q All right, and as I understand that, do you
8 recall that -- do you recall that program being
9 conducted?

10 A I remember putting -- getting our growers to a 12:54PM
11 program that was being put on by the State of
12 Arkansas in accordance with the -- Oklahoma.
13 Oklahoma at that time was doing educational programs
14 as well. The State of Arkansas I believe also
15 agreed to do some educational programs, and this 12:55PM
16 looks to be what that educational program was in
17 Arkansas.

18 Q And as I read this document, it says it's only
19 your grower contract producers in the Eucha-Spavinaw
20 watershed; is that correct? 12:55PM

21 A For this meeting, that's what it looks like,
22 yes, sir.

23 Q Okay, and was there another meeting for those
24 growers in any other watersheds similar to this?

25 A There could have been. I do not recall that. 12:55PM

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1 Q Well, if there had been, would you not have
2 reported that also in this document?

3 A If it had happened before I filled this out,
4 yes, I would have reported it. If it would have
5 happened after I filled this out, I wouldn't have 12:55PM
6 had that information.

7 Q In the third paragraph it says, poultry
8 environmental committee was established in 1997. Is
9 that committee still in effect?

10 A Not to my knowledge. 12:56PM

11 Q Did you participate in that committee?

12 A It's possible I could have. I do not recall
13 that but it is possible.

14 Q Who else was on the committee, if you know?

15 A Well, it says that we have a contract producer 12:56PM
16 on there. I don't recall who our contract producer
17 representative would have been on there. I don't
18 know if it would have been ours or of another
19 company.

20 Q Who from Cargill besides yourself was on that 12:56PM
21 committee?

22 MR. TUCKER: Object to the form of the
23 question because he indicated he doesn't remember
24 for sure whether he was on it or not.

25 A I could have been on this committee. I don't 12:56PM

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1 recall it.

2 Q I'm asking you, who else from Cargill would
3 have been on that committee?

4 A I do not know.

5 Q Did Cargill require its growers to attend this 12:57PM
6 meeting that was referred to, this three-hour
7 program?

8 A We asked our growers to attend.

9 Q And if they did not attend, was there any
10 consequences? 12:57PM

11 A No, sir.

12 Q Did Cargill determine at the meeting who of
13 its contract producers in fact attended?

14 A Well, sir, I think at that time we had less
15 than ten growers in there, in the Eucha-Spavinaw 12:57PM
16 watershed, so we would have known who was there and
17 who was not there.

18 Q Go to the second page of this document. Item
19 No. 4 at the tops says -- talks about voluntary
20 programs or BMP programs, and your Item 4 says, a 12:58PM
21 letter will be sent to our producers asking them to
22 follow BMPs listed until they receive their nutrient
23 waste management plan; do you see that?

24 A Yes, sir.

25 Q What did you understand the term nutrient 12:58PM

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1 waste management to mean?

2 A NMP, nutrient management plan.

3 Q What did you understand waste management to
4 mean?

5 A Nutrient management plan dealing with poultry 12:58PM
6 litter.

7 Q Doesn't say litter, though, does it?

8 A No, sir. That could have been terminology
9 used by our state at that time. I don't know where
10 that terminology came from. 12:58PM

11 Q Do you know whether in fact a letter was sent
12 to your contract producers as this says that it will
13 be?

14 A I do not recall that letter.

15 Q Okay. Further down in the middle of the page 12:59PM
16 it says, the question that you're to respond to is
17 percentage of your growers that have nutrient

18 management plan in place, and then it goes to say,
19 it does include phosphorus as well as nitrogen, and
20 the statement written here by you says, I estimate 12:59PM
21 that around 20 percent of our contract producers
22 have a nutrient management plan. How did you make
23 that estimate?

24 A It was a guess; it was an estimate.

25 Q Did you do anything to determine who had or 12:59PM

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1 did not have a nutrient management plan with your
2 contract producers?

3 A No, sir. I did not contact our contract
4 producers.

5 Q Did you make an inquiry with your flock 12:59PM
6 supervisors as to who had nutrient management plans
7 within your contract producers?

8 A That is a possibility. I could have maybe
9 asked them if they knew a rough estimate.

10 Q Why would you want just a rough estimate; 01:00PM
11 wouldn't you want the exact amount?

12 A They wouldn't have known.

13 Q Oh. They wouldn't have checked on that
14 themselves?

15 A I do not know if they would have known or not 01:00PM
16 in 1998.

17 Q Well, if you wanted to know the number that
18 had it, wouldn't you want to count them?

19 A Sir, I don't remember filling this out, but I
20 doubt I had a month to contract everybody to fill 01:01PM
21 everything out. So this was a survey. I do not
22 know what the NTF was going to use it for, and when
23 I filled it out, I did the best of what I knew was
24 going on and I filled it out.

25 Q Did you send it back to NTF? 01:01PM

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1 A Well, yes, sir. I don't remember doing it but
2 I must have.

3 Q Did NTF request that you provide them accurate
4 information?

5 A NTF requested us to fill out a survey to the 01:01PM
6 best of our ability.

7 Q Let me hand you Exhibit 41 and ask you if
8 you've seen it. There are two documents there
9 actually. First one is a letter signed by you. The
10 other one has your name on it but is unsigned. Do 01:02PM
11 you know when the first letter was written by you
12 and sent to Cargill contract producers as it states
13 on the face of it?

14 A Please let me read it. Okay, sir. What was
15 the question? 01:03PM

16 Q Is it your signature on the first page of this
17 document, Bates number 16559?

18 A Yes, sir.

19 Q All right, and did you in fact send that
20 letter to contract producers? 01:03PM

21 A I do not recall doing it but, yes, I probably
22 did.

23 Q First sentence says, it has become
24 increasingly important that the poultry industry be
25 proactive on environmental issues that we, as an 01:03PM

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1 industry, are now facing. Can you tell me what you
2 understood the environmental issues that you were
3 facing at the time you wrote this letter?

4 A Well, as going through the '90's, I mean
5 science changes, legislation changes, regulations 01:04PM
6 change, and Oklahoma -- or legislation for litter
7 was being enacted. So that would be the industry
8 changes I've been talking about, yes, sir.

9 Q This states that as most of you may have seen
10 in the news, the State of Oklahoma is trying to pass 01:04PM
11 legislation that will affect poultry producers in
12 Oklahoma and possibly in the near future producers
13 in Arkansas. Does that assist you in placing a time
14 on when this document was written by you?

15 A Mid '90's, '96, '97 maybe. I do not know. 01:04PM

16 Q Okay. The next sentence written by you says,
17 this legislation is aimed at protecting the water
18 from phosphorus contamination; did I read that
19 correctly?

20 A Yes, sir. 01:05PM

21 Q And you wrote that; is that true?

22 A Uh-huh.

23 Q And did you mean it when you wrote it?

24 A That was my interpretation of why -- what I
25 was told by the state officials in Oklahoma of why 01:05PM

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1 these legislative laws were being considered.

2 Q All right. The next sentence you write says,
3 phosphorus can contaminate water when there is
4 runoff after the litter is spread on the fields.

5 You wrote that; correct?

01:05PM

6 A Yes, sir.

7 Q And where did you get that information?

8 A That would have also been probably coming from
9 a reason that -- from the state, some state official
10 of why these rules were being done.

01:05PM

11 Q And did you believe that statement was true?

12 A Well, sir, if BMPs are not followed and
13 nutrient management plans are not followed and it's
14 not handled properly, there is an increased risk
15 that you could have runoff.

01:05PM

16 Q I'll read the sentence to you again:

17 Phosphorus can contaminate water when there is
18 runoff after the litter is spread on fields. Did
19 you believe that statement to be true, yes or no?

20 A Sir, if litter is handled improperly, there is
21 an increased risk that you could have runoff and
22 could cause water quality issues.

01:06PM

23 Q You didn't say that in this letter, though,
24 did you?

25 A It says the same thing.

01:06PM

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1 Q No, it doesn't. Read it to me, if you would,
2 please, starting with phosphorus.

3 A Phosphorus can contaminate water when there is
4 runoff after the litter is spread on fields.

5 Q Now, does it say anything about potential or 01:06PM
6 risk?

7 A Sir, if the phosphorus leaves the field, there
8 is potential, yes, sir.

9 Q But you didn't say that; you agree with that;
10 it's not written here? 01:06PM

11 A It says when there is runoff. I do not know
12 when there is runoff. If there is -- runoff occurs,
13 can water quality issues happen, yes, sir.

14 Q And the third paragraph, first sentence it
15 states by I, a step in this proactive approach is 01:07PM
16 for each farm to have a litter plan developed with
17 NRCS. What is the NRCS?

18 A National Resource Conservation Service.

19 Q All right, and you knew what that was when you
20 wrote this letter; correct? 01:07PM

21 A I believe I would have known that, yes, sir.

22 Q Okay, and you say it's a step as a proactive
23 approach to have a litter plan; true?

24 A Yes, sir.

25 Q Okay, and did you or anybody in Cargill 01:07PM

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1 require your growers to be proactive and have a
2 litter plan?

3 A For -- if it was a state law, yes, they were
4 required to have -- if there was regulations or
5 legislation in a state, yes, they were required to
6 have a nutrient management plan. If the state that
7 they were in did not require it, we were strongly
8 encouraging it.

01:07PM

9 Q So you didn't require it unless the state
10 required it?

01:08PM

11 MR. TUCKER: Kind of asked and answered.

12 A If this letter was written in '96, '97 or '98,
13 whenever it was, if the state required it, yes, we
14 required it. If the state did not require it, we
15 recommended it.

01:08PM

16 Q Were there any consequences for those who
17 didn't follow the recommendation of Cargill to have
18 a nutrient management plan?

19 A Yes. If the state required it and they didn't
20 have one and it was brought to our attention by the
21 state officials, we would not have done business
22 with them.

01:08PM

23 Q Looking at the next page in this document
24 dated 4-27-98, did you assist in authoring this
25 letter?

01:09PM

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1 A I don't recall but, yes, I could have -- well,
2 yes, it says from me.

3 Q Okay, and where is Madison County located;
4 what are we referring to here; Arkansas?

5 A Yes, sir. 01:09PM

6 Q Okay, and did you have responsibility for
7 Madison County in 1998?

8 A I was the grow-out manager at that time and,
9 yes, we did have -- we were contracting with growers
10 in Madison County. 01:09PM

11 Q Okay. Did you require growers in Madison
12 County to have nutrient management plans?

13 A In 1998 we recommended it, but there was not a
14 state law in Arkansas at that time.

15 Q So there was no consequences there if they
16 didn't do it either; correct? 01:09PM

17 A (Witness shakes head from side to side).

18 Q You need to respond verbally.

19 A Would you repeat the question?

20 Q So there was no consequences for those growers
21 also who didn't have a nutrient management plan? 01:09PM

22 A Arkansas was not requiring a nutrient
23 management plan. We requested it or we strongly
24 requested or needed -- told them probably be a good
25 thing if they got it and -- but, no. If they didn't 01:10PM

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1 get one, we wouldn't have known that. We wouldn't
2 have known if they had gotten one.

3 Q So there are no consequences if they didn't
4 have one; is that a fair statement?

5 A That's a fair statement. 01:10PM

6 Q When Cargill deals with its contract growers
7 in the Springdale complex, do those growers compete
8 for what I would call financial incentives in
9 raising birds?

10 A I don't understand what you mean by financial 01:10PM
11 incentives.

12 Q Do they get paid more when the contract
13 growers perform better based on standards you set
14 than those -- other than -- I'm sorry. Let me start
15 over. Does a contract grower get paid more if he's 01:11PM
16 rated higher as a producer than those who are rated
17 lower as a producer by Cargill?

18 A If you mean are contract producers under a
19 competitive contract in that if your depending on
20 your performance, can you make more money, yes. 01:11PM

21 Q Okay. Now, in that -- is that uniform -- is
22 the application of that competitive standard uniform
23 for all growers in the same complex?

24 A In the same complex for the same bird type,
25 yes, sir. 01:12PM

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1 Q Okay. So if you have a hen being raised in
2 Oklahoma and a hen being raised in Arkansas both in
3 the Springdale complex, they compete among
4 themselves; correct?

5 A If they were within the set time of placement 01:12PM
6 for a -- yes, they would, yes.

7 Q Okay. So it's conceivable that a grower after
8 1998 in Oklahoma in the Springdale complex, who
9 receives birds essentially at the same time as an
10 Arkansas grower, has to comply with nutrient 01:12PM
11 management plan but the one in Arkansas does not; is
12 that a fair statement?

13 A The growers in Oklahoma were having to comply
14 with Oklahoma law, and the growers in Arkansas were
15 having to comply with Arkansas law, yes, sir. 01:12PM

16 Q If there's no law in Arkansas requiring
17 nutrient management plans and they don't have a
18 nutrient management plan, they're still competing
19 against an Oklahoma grower who is required to follow
20 a nutrient management plan; correct? 01:13PM

21 A Well, the birds' performance from each
22 location -- the flock and the performance of each
23 flock would still be competing, yes.

24 Q Let me hand you Exhibit 35. Dealing only with
25 the first page, do you recognize the first page as a 01:13PM

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1 nutrient management guideline prepared by the U.S.
2 Department of Agriculture Soil Conservation Service
3 and it shows Little Rock, Arkansas guide number at
4 the top.

5 A That is the title at the top of the page, yes. 01:14PM

6 Q Do you recognize seeing that document
7 yourself?

8 A No, sir.

9 Q Do you know whether or not -- why it would be
10 in Cargill's files? 01:14PM

11 A It would have been part of us trying to be
12 educated, trying to stay up on regulations, laws,
13 guidelines in each state.

14 Q Did you as environmental coordinator ever
15 refer to or look at this document? 01:14PM

16 A I do not recall doing it. I could have, yes,
17 sir.

18 Q Who else in Cargill from 1992 to present when
19 this was produced would have referenced or had
20 access to this document, if you know? 01:14PM

21 A Well, sir, I don't know who would have had
22 access to this document.

23 Q Look at the second page of this document.
24 Have you seen this cooperative extension service
25 document titled utilizing dry poultry litter, an 01:15PM

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1 overview?

2 A I don't recall. I -- it's possible.

3 Q Is either this document or the first page of
4 this document something that Cargill supplied its
5 contract growers at any time?

01:15PM

6 A If we were asked to by the State, yes, sir, we
7 would have. If it was -- if we helped facilitate a
8 meeting and get the growers to for the State when
9 they were talking, they could have received it at
10 that time.

01:15PM

11 Q So your answer is you don't know?

12 A I don't know.

13 Q But if they did, it was only because the State
14 required it or requested it?

15 A Yes, sir.

01:16PM

16 Q The last page of this document is a pasture
17 and hayland management animal waste utilization
18 dated July of 1993 produced by the same entities.
19 Do you recall seeing that document?

20 A No, sir.

01:16PM

21 Q Do you have the information to suggest who
22 might have had this in their files at Cargill?

23 A It could have been -- no, sir. It could have
24 been in my files. It could have been on -- it could
25 have been in my information that I had. I don't

01:16PM

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1 recall seeing it, though.

2 Q So if you don't recall seeing it, you probably
3 didn't read it?

4 A No, sir. That's not what I said. I don't
5 recall seeing it. If I had it, I could have read 01:16PM
6 it; I could not have read it. I don't know.

7 Q Do you understand what the purpose of a
8 nutrient management guideline is, what its goal --

9 A Nutrient management -- nutrient management
10 plan is to -- 01:17PM

11 Q That's not my question. Nutrient management
12 guideline. We're talking about guidelines. Do you
13 know what the purpose of nutrient management
14 guidelines are?

15 A Well, sir, let me read it. 01:17PM

16 Q You don't know generally?

17 A Well, sir, you've given me a sheet of paper
18 with a title, and I have no idea what it says. So
19 to comment -- and I do have to read it and see what
20 it says and see what it's talking about. 01:17PM

21 Q Let me make sure I understand. You've been
22 certified in the state of Arkansas at least one time
23 in your life as a nutrient management plan writer;
24 correct?

25 A Yes, sir. 01:17PM

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1 Q And you're telling me you don't know what
2 nutrient management guidelines are as a general
3 term?

4 A I'm telling you, you gave me a sheet with that
5 title on it, and I need to read it to see what that 01:18PM
6 statement is. You told me to go to the first page
7 and look at it.

8 Q I'm asking you to tell me if you know what
9 that term generally is known to mean as a
10 nutrient -- a certified, prior certified nutrient 01:18PM
11 plan -- nutrient management plan writer?

12 MR. TUCKER: Object to the form of the
13 question.

14 A Sir, without reading it and if you're not
15 going to let me read it and you just want me to go 01:18PM
16 off nutrient management guidelines, to me that would
17 be BMPs.

18 Q And those are best management practices?

19 A Yes, sir, without reading --

20 (Whereupon, a discussion was held off
21 the Record.)

22 MR. TUCKER: Sorry to interrupt. I know
23 you were just now getting ready to have fun.

24 MR. BULLOCK: For the Record, who just
25 joined? 01:19PM

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1 MS. GRIFFIN: Jennifer Griffin.

2 MR. BULLOCK: Welcome back, Jennifer.

3 MS. GRIFFIN: Thank you.

4 Q Look at Page 123845 in this same document. In
5 the second paragraph, last sentence it says, 01:20PM
6 referring to poultry -- actually it says -- it was
7 referring to manure produced by birds. It says, it
8 is also a potential pollutant of surface and
9 groundwater if mishandled; did I read that last
10 sentence correctly? 01:20PM

11 A Yes, you did.

12 Q All right. Recognizing that it also says
13 before it's a -- poultry litter is a valuable and
14 natural soil amendment. Recognizing that is also
15 said there, can you tell me when you or others at 01:20PM
16 Cargill that you know first become aware that there
17 is a potential pollutant of surface and groundwater
18 if poultry litter is mishandled?

19 MR. TUCKER: Object to the form of asking
20 more broadly than him. 01:20PM

21 MR. GARREN: I said if he knows.

22 MR. TUCKER: Okay.

23 A Could you ask that question one more time?

24 Q Yes. Who -- we'll ask it this way: When did
25 you first know that poultry litter, if mishandled, 01:21PM

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1 is a potential pollutant for surface and
2 groundwater?

3 A I don't recall the exact date. It could have
4 been back when the State of Oklahoma was talking
5 about changing the -- or enacting laws for litter
6 application.

01:21PM

7 Q Could have been as early as December of 1992?

8 A Sir, I don't know.

9 Q Could have been as early as July 1993?

10 A I do not --

01:21PM

11 Q Do you know that statement to be true today,
12 that it is also a potential pollutant of surface and
13 groundwater if mishandled, referring to poultry
14 litter?

15 A If poultry litter is mishandled, there is a
16 risk that water quality issues could arise.

01:22PM

17 Q Does Cargill share that same belief that you
18 just espoused to us today?

19 MR. TUCKER: If you know from your own
20 knowledge.

01:22PM

21 A Yes, sir, I believe they do.

22 Q What has Cargill done to your knowledge to
23 ensure itself that their contract poultry growers
24 are handling properly the poultry waste generated by
25 the turkeys owned by Cargill?

01:23PM

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1 A Could you ask that one more time?

2 Q What does Cargill -- let me put it this way:

3 What did Cargill do as early as the mid to late

4 '90's to ensure itself that its company growers,

5 contract growers were properly handling the poultry 01:23PM

6 waste produced from the Cargill turkeys?

7 MR. TUCKER: So we're clear, you're

8 referring to his knowledge; is that correct?

9 MR. GARREN: He's here personally, is he

10 not? 01:23PM

11 MR. TUCKER: Yes.

12 A When we first -- when the State of Oklahoma

13 first was enacting or doing the legislation on

14 litter, the State and OSU came to the poultry

15 companies to help set up education programs, help 01:23PM

16 disseminate information to everyone for the contract

17 producers to kind of let them know what was going

18 on. I believe at that time also Arkansas, as we

19 previously saw that, was also doing some educational

20 programs as well for their growers in Arkansas. So 01:24PM

21 we kind of helped facilitate that.

22 Q Let me hand you a document we've marked as

23 Exhibit 29 and ask you whether or not you've seen

24 that document before.

25 A I do not recall seeing it, but it's possible. 01:25PM

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1 Q It's possible. Are you familiar with what the
2 Arkansas Soil & Water Conservation Commission is?

3 A It is a state agency, yes, sir.

4 Q Do you know what it does?

5 A I believe they are the ones that, if I'm not 01:26PM
6 mistaken, are the ones that write the nutrient
7 management plans, and I do not know what their other
8 responsibilities are.

9 Q Looking at Bates number 16350 in the left-hand
10 column, the very last paragraph it starts, I'll read 01:27PM
11 it, since March 1990 the poultry industry has been
12 informing their growers of the best management
13 guidelines, see Page 12, developed jointly by the
14 Natural Resource Conservation Service, formerly SCS,
15 cooperative extension service, Arkansas Soil & Water 01:27PM
16 Conservation Commission, the Arkansas Department of
17 Pollution Control & Ecology and the industry. Did
18 you see that sentence?

19 A Yes, sir.

20 Q And do you believe that to be a true 01:27PM
21 statement?

22 A I do not know if that's a true statement or
23 not. I don't know.

24 Q You've been working in the poultry industry
25 since before 1990; correct? 01:27PM

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1 A Yes, sir.

2 Q Okay, and you don't have a recollection here
3 sitting today that the industry has been informing
4 its growers as early as March of 1990 about using
5 best management guidelines? 01:28PM

6 A I was not in the commercial contract end of
7 our business at that time, so I couldn't -- I don't
8 know if they did that or not.

9 Q Okay. Are you familiar with the Arkansas
10 governor's animal waste task force that was reported 01:28PM
11 in 1993?

12 A I was not familiar with it in 1993. Have I
13 heard about it since then? I have heard about it.
14 I did not know about it at that time.

15 Q When do you recall first hearing about it? 01:28PM

16 A In preparing for this deposition.

17 Q That's the earliest or the first time you
18 heard about the governor's task force in Arkansas on
19 animal waste management?

20 A During the -- since this lawsuit has been 01:28PM
21 filed, that was the first time that I heard about
22 that, yes.

23 Q Were you familiar with it involving the City
24 of Tulsa lawsuit versus Cargill?

25 A I do not recall that ever being brought up in 01:29PM

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1 the City of Tulsa. It is possible, but I do not
2 recall it being brought up.

3 Q Did Cargill actually at any time to your
4 knowledge distribute best management practices to
5 any of its contract growers? 01:29PM

6 A We had developed I believe in 2002, I don't
7 remember the time frame, 2002, 2003, we did disperse
8 an environmental BMP book to our contract growers,
9 yes, sir.

10 Q Is that the contract growers -- it's referred 01:29PM
11 to environmental best management practices guideline
12 or handbook?

13 A I don't have it in front of me but, yes, that
14 sounds right.

15 Q I've not marked these exhibits, but I'll hand 01:30PM
16 you two versions of those which have been previously
17 marked in other exhibits (sic). Does that look like
18 one or both of the handbooks that you are referring
19 to?

20 A The first page looks like the one I am 01:30PM
21 familiar with, yes.

22 Q Just read the Bates number, the Cargill CARTP
23 number.

24 A Is that the Bates number?

25 Q Yes, sir. What number is that? 01:30PM

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1 A 000005.

2 Q And it goes through what number; 37?

3 A Yes, sir.

4 Q Okay. Thank you. You may hand those back

5 since I'm not marking them. 01:30PM

6 MR. GARREN: I guess we need to break. I'm
7 sorry. Let's take a break.

8 VIDEOGRAPHER: We are now off the Record.
9 The time is now 1:30 p.m.

10 (Following a short recess at 1:31 p.m., 01:31PM
11 proceedings continued on the Record at 1:43 p.m.)

12 VIDEOGRAPHER: We are now back on the
13 Record. The time is now 1:43 p.m.

14 Q Mr. Alsup, let me hand you what's been marked
15 as Exhibit 30, and we'll pass one over to your 01:44PM
16 counsel. Are you familiar with the turkey
17 management handbook, Cargill live production team,
18 Springdale, 1990 and '91?

19 A I am aware that there has been a handbook,
20 yes, sir. 01:44PM

21 Q Let me direct your attention, if you would, to
22 Page 229519. Does it say house preparation and
23 sanitation of brooder house?

24 A Yes, sir.

25 Q And Paragraph 3, it talks about wash down, and 01:44PM

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1 then in the last sentence of that Paragraph 3 I'll
2 read to you. It says, no litter should be piled
3 outside the house unless it is at least 100 feet
4 away and covered to prevent groundwater
5 contamination from rain runoff; do you see that?

01:44PM

6 A Yes, sir.

7 Q And that was a recommendation made by Cargill
8 in its own management handbook; would you agree?

9 A Yes, sir.

10 Q All right, and it says in the phrase before
11 that, litter may be reused but consult your flock
12 supervisor on what should be done before it is
13 removed. Is that typically what growers do when
14 they remove the litter from their house?

01:45PM

15 MR. TUCKER: Can I ask you to be more
16 specific? I know your question probably made sense,
17 but I thought back on it and I decided it didn't.

01:45PM

18 MR. GARREN: Well, all right.

19 Q The whole sentence says, if there has been no
20 health problem with previous flock, litter may be
21 reused but consult your flock supervisor on what
22 should be done before any is removed. So in a brood
23 house, does a flock supervisor have to approve the
24 removal of the litter to either grow-out or
25 someplace else?

01:45PM

01:45PM

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1 A No, sir.

2 Q Okay, but this implies that they should talk
3 to the supervisor before they remove it; correct?

4 A To me that would have been -- we need a
5 certain bedding height I think is what that is 01:46PM
6 talking about in our grow-out houses.

7 Q Look at Page 229541 near the back of this
8 document. Does it say cleaning and sanitation of
9 grow-out house at the top of the page?

10 A Yes, sir. 01:46PM

11 Q Looking at page -- at the Paragraph B as in
12 boy, it says remove and spread all caked litter from
13 house. Then it says, last part of this paragraph,
14 do not pile outside of house unless 100 feet from
15 the houses and covered to prevent groundwater 01:46PM
16 contamination from rain runoff; did I read that
17 correctly?

18 A Yes, sir.

19 Q And that's again a recommendation Cargill was
20 making or instructions provided in its production 01:47PM
21 team management handbook; correct?

22 A Yes, sir.

23 Q Okay. Was this handbook submitted to its
24 contract growers at or about the time it was
25 produced? 01:47PM

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1 A Sir, I was not in this division.

2 Q I'm asking if you know.

3 A I assume it was. I don't know.

4 Q Okay. All right. Let's change subjects a

5 little bit and let me ask you about obedience of 01:47PM

6 laws. Who in Cargill or the CTP, LLC, is

7 responsible to see that the IRW contract growers are

8 familiar with all applicable laws?

9 A The contract growers themselves are

10 responsible for that. 01:48PM

11 Q And how do they know that they're supposed to

12 do that?

13 A They are supposed to follow and are required

14 to follow all rules and regulations from any state

15 that they do business in. 01:48PM

16 Q And how do they know what laws or rules or

17 regulations they should be covered by?

18 A I do not know how they gather all their

19 information. Cargill could provide some of it.

20 Some of it could come from the extension service. 01:48PM

21 Some of it could come from meetings that they

22 attend. Some of it could come in if -- like if

23 they're in Oklahoma, the inspectors that come on

24 their farm and inspect their farm yearly would be --

25 I would assume would be the ones to tell them what 01:49PM

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1 the laws and regulations are.

2 Q You're assuming, meaning you don't know?

3 A Well, no, sir. I'm not a contract grower. I
4 don't know how they learn.

5 Q And who would be responsible in the Cargill or 01:49PM
6 CTP, LLC, to see that its company growers are
7 familiar with all applicable laws?

8 A We do not have any company commercial birds,
9 so --

10 Q Well, you have breeder facilities; correct? 01:49PM

11 A We have six breeder farms, yes.

12 Q Are they not subject to certain rules, laws
13 and regulations in the state of Arkansas?

14 A Yes, sir.

15 Q I'm asking you who in Cargill or CTP, LLC, is 01:49PM
16 responsible to know what rules and regulations apply
17 to those breeder facilities.

18 A We are all responsible for environmental laws.
19 Breeder manager would be responsible. I could aid
20 in that -- in helping him. Our production manager 01:49PM
21 could aid in that.

22 Q So there's no one person who takes
23 responsibility to know that those on the ground, if
24 you will, running the operation at the farm knows
25 the laws and rules and regulations they're supposed 01:50PM

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1 to follow?

2 A The breeder manager is ultimately responsible
3 for what happens on the breeder farms. How -- I
4 mean we all help in doing research and learning and
5 trying to know what the rules and regulations are. 01:50PM

6 Q How do you share that information?

7 A Talking to each other.

8 Q And so if you learn something new, you go
9 around and tell everybody what you learned on a
10 regular basis? 01:50PM

11 A I don't know what regular means, but if
12 something is new and pertinent to our operations,
13 yes, sir, we would tell each other that.

14 Q Is there any individual responsible in Cargill
15 or the CTP, LLC, to ensure that their contract 01:51PM
16 growers are complying with all applicable laws?

17 A The contract growers -- no, there's not.

18 Q Okay. Is there anyone in Cargill or CTP, LLC,
19 who is responsible for detecting any violations of
20 laws or rules by their contract growers? 01:51PM

21 A Could you repeat that question?

22 Q Yeah. Who in Cargill is responsible for
23 detecting any violation of law or Cargill policies
24 by your contract growers?

25 A On a contract farm, the contract producer is 01:51PM

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1 responsible for that.

2 Q For detecting any violation of law or Cargill
3 policies, it's the grower's responsibility?

4 A I don't know what violation -- Cargill does
5 not operate those farms. The contract producer 01:52PM
6 does. We are not actively there operating and
7 managing that farm. So it would be the contract
8 producer's responsibility.

9 Q As it relates to the environmental laws, who
10 in Cargill is responsible for detecting any 01:52PM
11 violation of its contract growers of those laws?

12 A The contract producer.

13 Q So the flock supervisor has no responsibility
14 to do that?

15 A The flock supervisor does not investigate 01:52PM
16 compliance.

17 Q Okay. Who in Cargill is responsible for
18 reporting any violation of law or Cargill policies
19 by its contract growers?

20 A Reporting to who? 01:52PM

21 Q To either Cargill or appropriate state agency.

22 A Sir, they wouldn't know if there's any
23 violations. The only one that would -- if they did
24 know, and I don't know how they would know, would be
25 a flock supervisor because they're the ones that 01:53PM

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1 visits the farm.

2 Q Okay, and if he noticed a violation, who would
3 he report it to? If a flock supervisor witnessed a
4 violation on a contract farm, who would he report it
5 to? 01:53PM

6 A The production manager.

7 Q And would the production manager report it to
8 anyone else or would he be responsible for handling
9 the issue?

10 A He would tell me about it. 01:53PM

11 Q He would tell you about it?

12 A At Springdale, yes, sir.

13 Q All right, and then would you have to report
14 it to anyone else or would you deal with the issue
15 yourself? 01:54PM

16 A The production manager and myself and the
17 flock supervisor would deal with it.

18 Q Is it -- you're responsible for the flock
19 supervisors in Springdale; correct?

20 A No, sir, I am not. 01:54PM

21 Q You don't administer them or supervise them?

22 A No, sir.

23 Q Who does?

24 A Jason Witt.

25 Q Are you responsible for supervising Jason 01:54PM

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1 Witt?

2 A No, sir.

3 Q Who does that?

4 A Tim Maupin.

5 Q Okay. Let's talk about basically bird numbers 01:54PM
6 generally, and I want to ask you, does Cargill have
7 any guidelines that it can use to determine how many
8 birds it can place in the square footage in a house?

9 A Do you mean does Cargill use a certain square
10 footage for birds placed? 01:55PM

11 Q Does it?

12 A Yes, sir.

13 Q Okay. Give me what that square footage is
14 when it places birds, and I understand there will be
15 different birds. For hens, what is the square 01:55PM
16 footage that Cargill would use for placement of
17 hens?

18 A On an operation with three 50-by-500 square
19 foot houses, one brood, two grow-outs, we would
20 place 27,000 hens. 01:55PM

21 Q That's based on three houses at 50-by-500
22 square feet; correct?

23 A Yes, sir.

24 Q Is there a per bird per square foot ratio that
25 you look to meet or achieve in placing hens? 01:56PM

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1 A Well, sir, if I had a calculator, I could
2 figure that out, but that would be the --

3 Q If we do the math, that would be it?

4 A Yes, sir. For that size operation, yes, sir.

5 Q So I guess my question, though, is do you 01:56PM
6 generally know how many square feet per hen you
7 generally try and achieve when you place them on a
8 per bird basis?

9 A In our grow-out houses, I think a good rule of
10 thumb is 2.2 to 2 -- I think some of the older 01:56PM
11 houses go up to 2.5. It would be in the twos. It
12 would be in the mid two square foot per bird range
13 for hens.

14 Q And what would it be then for toms roughly?

15 A In the high threes, three seven to four square 01:57PM
16 feet.

17 Q Per bird?

18 A Yes, sir.

19 Q Okay. Now, you also have what's called big
20 hens; is that correct? 01:57PM

21 A It has been in the past, but we currently --
22 we haven't raised big hens in awhile.

23 Q Does that -- in just Springdale or all over?

24 A No. I think in some of the other complexes
25 they still do raise big hens, but at Springdale we 01:57PM

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1 no longer have that bird type.

2 Q And how long has that been?

3 A Sir, I don't know exactly. Maybe over a year,
4 maybe a year or two years.

5 Q All right. When you were doing it, do you 01:57PM
6 know what the square footage per bird ratio might
7 be?

8 A No, sir, I don't remember that.

9 Q Big toms, in Springdale do you continue to use
10 big toms, raise them? 01:58PM

11 A Yes, we have big toms at Springdale.

12 Q What is the ratio on a square footage per bird
13 for big toms?

14 A I thought I answered that, but I think it's
15 three seven to four square feet for a big tom. 01:58PM

16 Q Okay.

17 A And if you did not -- if you asked --

18 Q I asked toms, so --

19 A I'm sorry. Okay. I mistook that.

20 Q That's all right. 01:58PM

21 A I thought you were assuming big toms. That's
22 the only toms that we have at Springdale.

23 Q So you only raise big toms, not just toms at
24 Springdale?

25 A Okay, yes. It's regular toms. I know it as 01:58PM

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1 regular toms, yes, and, no, we do not have regular
2 toms in Springdale.

3 Q All right, but they are raised elsewhere?

4 A Yes, sir.

5 Q And do you know what the square footage per 01:59PM
6 bird is for a regular tom?

7 A No, sir.

8 Q Has Springdale raised them in the past?

9 A In the '80's and some in the '90's I believe
10 that they had some regular toms. 01:59PM

11 Q Were you with Cargill when it was raising
12 chickens?

13 A No, sir. At Springdale, no, sir.

14 Q Okay. If you were asked today to identify the
15 number of birds produced by Cargill Turkey 01:59PM
16 Production, LLC, within the IRW on an annual basis,
17 what would you do?

18 A I would go to our -- identify the growers that
19 we currently have that are raising that are in the
20 IRW. I would go to production data, meaning 02:00PM
21 finished flock reports or reports that's done after
22 the flock is processed, add up that head count that
23 we processed off the farms and, I'm sorry, did you
24 say for -- I don't know what time frame you said
25 but -- 02:00PM

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1 Q On an annual basis.

2 A If we had the computer data for an annual
3 basis, that's how I would get that.

4 Q Okay. When you say if you had it, are you
5 saying you don't?

02:00PM

6 A Well, you said an annual basis. If you told
7 me in 1990 what was it, I -- I don't -- I'm not an
8 IT person, but I don't think that data would exist
9 but -- and I don't know exactly how far our computer
10 data goes back, but if I had it, that's how I would
11 do it.

02:00PM

12 Q My initial question was today.

13 A Today, yes, that's how we do it.

14 Q All right, and you would use a finished flock
15 report; is that what you call it?

02:01PM

16 A Yes, sir. A report that is generated after a
17 flock has been processed, I would use those numbers.

18 Q And do you know what the title of that report
19 is?

20 A There's an open flock settlement. There's
21 some flock settlement reports. I don't know the
22 exact title. There's some open flock settlements or
23 flock settlement reports that are generated as part
24 of the production data, and they have had processed
25 on it.

02:01PM

02:01PM

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1 Q Is there a flock -- I mean is that report
2 identified by a code number? Let me ask you this:
3 Do you know what the code number is for that report?

4 A No, I do not know what the code number is.

5 Q If during the years 2004 to 2006 that same 02:01PM
6 question was asked, who would be the person most
7 likely to know how to calculate the bird numbers?

8 A Well, sir, I have been asked to calculate the
9 bird numbers.

10 Q In 2004 to 2006? 02:02PM

11 A Yes, sir.

12 Q And who asked you to do that?

13 A Counsel.

14 Q Anyone else?

15 A No, sir. 02:02PM

16 Q And what area or geographic area were you
17 calculating bird numbers for?

18 A The Illinois River watershed.

19 Q Okay, and do you recall when you were first
20 asked to create such a report? 02:02PM

21 A Well, we first started trying to identify
22 growers -- I believe it first started out that we
23 were asked to identify current growers in the IRW
24 and we did, and then it went to identifying growers
25 previous five years, and we did that, and then it 02:03PM

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1 progressed to actual bird numbers, and I was
2 involved in that, so it could have -- I don't know
3 the time frame. It could have -- all that started
4 in '07.

5 Q Let me hand you Exhibit No. 4 and ask you if 02:03PM
6 you've seen that document at any time.

7 A I -- well, the spread -- to answer your
8 question, this spreadsheet and it's --

9 MR. TUCKER: Should we fix this exhibit
10 before you ask him about it? Take a look at it, if 02:04PM
11 you would.

12 MR. GARREN: That's interesting, isn't it.

13 MR. TUCKER: I think it was kind of
14 misstapled.

15 MR. WALKER: Looks like they slapped the 02:04PM
16 cover the other way around.

17 MR. GARREN: We've got it stapled in both
18 corners, but that's all right. It will work.

19 Q You might have to flip it upward because it's
20 stapled in both corners. 02:05PM

21 A Okay.

22 Q I have seen -- I'll represent to you these are
23 the answers that Cargill filed in response to
24 interrogatories or questions that were propounded to
25 Cargill by the State of Oklahoma in this case. 02:05PM

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1 A Okay. There's a multiple --

2 Q So what this does -- just so you'll know,

3 Cargill Turkey Production, when it made its

4 response, it listed its first response, its

5 supplemental response and its final response in

02:06PM

6 these answers.

7 A Okay.

8 Q The first set of interrogatories, if you look

9 at Page 2, the very last paragraph and the answer,

10 it says, with regard to Interrogatory No. 1, Section

02:06PM

11 D; do you see that?

12 A Yes, sir.

13 Q That was a response made by Cargill Turkey on

14 May 22nd, 2006. Are you telling me that in May of

15 2006 you were instructed to provide bird numbers to

02:06PM

16 counsel?

17 A No, sir. I was going through the process of

18 what I had been involved in and identifying growers,

19 identifying past growers and then to bird numbers.

20 Q You also said that you were asked by counsel

02:07PM

21 to get those bird numbers, did you not?

22 A Yes, sir, later in the -- I mean I don't know

23 the exact date but --

24 Q My question to you then is, this response that

25 was made in May 22, 2006, did you participate in

02:07PM

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1 providing bird numbers for Cargill Turkey Production
2 interrogatory response on May 22, '06?

3 A I don't recall doing it in '06.

4 Q Okay. Who else in your organization besides
5 yourself would be able to answer that question as to 02:07PM
6 how many birds were produced annually in the IRW at
7 that time frame, 2006, specifically before May of
8 '06?

9 A If they knew the growers that were in the IRW,
10 one of our accountants possibly could have because 02:07PM
11 she would have had maybe access to the reports.

12 Q Who is that person you're referring to or
13 persons?

14 A That would have been Brenda Roe.

15 Q Okay, and it required her to have something 02:08PM
16 she wouldn't normally have in accounting; is that
17 what you're saying?

18 A Well, it's -- when I read this, where it says,
19 with regard to Interrogatory No. 1, Cargill does not
20 track aggregated annual basis the number of birds on 02:08PM
21 a farm, that is true. We don't have a program or
22 anything that tracks that number. When you ask me
23 what I would have -- earlier when you asked me how I
24 would have derived that, I would have used processed
25 head in a calendar year. 02:08PM

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1 Q Okay. Look at the very first page of this
2 document where it recites the question. Reading
3 paragraph Interrogatory No. 1, for each of your
4 poultry growing operations in the IRW since 1952,
5 please provide the following information, Item D,
6 number of birds aggregated annually at each
7 location.

02:09PM

8 A Yes, sir.

9 Q It doesn't say track, does it?

10 A It doesn't what?

02:09PM

11 Q It doesn't ask whether you track the birds; it
12 asks you to simply provide the following
13 information, number of birds aggregated annually at
14 each location.

15 A And, sir, I may have misspoken and
16 misunderstood you, but what I'm trying to say is we
17 can't give you that number.

02:09PM

18 Q Okay. You couldn't do it in May of '06; is
19 that what you're telling me?

20 A No. No, sir.

02:09PM

21 Q Did you participate in providing information
22 that would show the margin of error on the number of
23 birds that are produced annually in the IRW?

24 A Yes, sir, I did.

25 Q And who did you -- at whose request did you

02:09PM

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1 provide that information?

2 A Our counsel.

3 Q And did you participate or work with anyone
4 else in providing that information besides counsel?

5 MR. TUCKER: Could you specify which 02:10PM
6 information?

7 MR. GARREN: The margin of error that I was
8 speaking to.

9 A Yes, sir.

10 Q So you did it on your own? 02:10PM

11 A Yes, sir.

12 Q Okay. Let me hand you what is marked as
13 Exhibit 5. We'll come back to the other one in a
14 second.

15 A Okay.

16 Q What I'm looking to is -- this is a letter by
17 counsel to me providing me certain charts, and I
18 wanted you to look at the charts to see if we can
19 identify if you know what these are. These are
20 spreadsheets prepared in Excel format. Did you 02:10PM
21 prepare any of these charts that we're looking at?
22 There's four pages attached in this letter.

23 A I prepared the --

24 MR. WALKER: Do you have a copy of that?

25 A These two with the head count on them -- 02:11PM

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1 MR. GARREN: One second. Let's see if we
2 can find the copy for counsel. I thought we handed
3 two over there.

4 MR. TUCKER: Thank you.

5 MR. GARREN: My fault. 02:11PM

6 A The first --

7 MR. TUCKER: I could have lost it just as
8 easy.

9 A The first two spreadsheets with the bird
10 numbers on them I prepared. 02:11PM

11 Q Did you prepare those at your desk, on your
12 computer or how did you do that?

13 A Yes, sir.

14 Q Okay, and the next two that speak to the
15 margin of error, estimated margin of error, did you 02:11PM
16 participate in preparing these two pages?

17 A Yes, sir.

18 Q So you participated in all four pages in some
19 form?

20 A Yes, sir. 02:11PM

21 Q All right. Let's talk about the two pages
22 separately.

23 A Okay.

24 Q The first two pages where it gives the bird
25 numbers, what did you do to prepare this document? 02:11PM

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1 A The first two pages, these numbers right here
2 -- well, there's three different areas, and I don't
3 have the color-coded version, and there was a
4 reason, but for the data that I had, the processed
5 head -- oh, there it is. 02:12PM

6 Q Look at that.

7 A Okay. For the processed head data that I had
8 in actual computer form, the actual production data
9 I had in a computer, I took -- I had a report run
10 that could kind of tabulate all that. 02:12PM

11 Q What was the name of that report?

12 A And that went back to -- I think it was our
13 reports we talked about earlier. I don't remember
14 the exact number, but it was a finished flock
15 something. 02:12PM

16 Q Was it something you could download to Excel
17 format?

18 A No, no, sir. I could not download it. Each
19 one of these numbers were individually entered, and
20 I had -- for calendar year I had a complete set of 02:12PM
21 data in the computer up to '04 or I'm sorry, back to
22 '04. Where '03 starts, I had partial computer data
23 that only went through part of '03, so these numbers
24 that are in peach or pink, I had to -- I used the
25 computer data that we had, and then I had to 02:13PM

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1 physically look up on the calendar where that
2 computer data ended and see if it was physically
3 possible to put another flock in there before that.

4 If it was, I averaged the computer data I had for
5 per flock and put that number in on a flock for that
6 year that I didn't have, and if two could fit in
7 there, I put two, and if zero flocks could have fit
8 back to January of '03, I didn't put any.

02:13PM

9 Q And did you do that same process for each year
10 going backward in time for which this exhibit
11 reflects?

02:14PM

12 A Well, that's where my computer data ended,
13 there, and then in 2000, 2001 and 2002 where it is
14 highlighted in green, I believe those are just
15 because I had no hard data on processed head and if
16 they were still producing for us, I averaged the
17 head processed for '03, '04, '05, '06, '07, came up
18 with a number and put that number into 2000, 2001,
19 2002.

02:14PM

20 Q Did you make any adjustments to that number
21 other than averaging the previous years or the
22 subsequent years?

02:14PM

23 A No. That -- well, ask that again.

24 Q When you put that number onto this sheet,
25 other than the averaging that you created, did you

02:15PM

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1 adjust that number for any reason?

2 A No, sir, because I was trying to use hard data
3 that I had in the computer to come up with a fairly
4 reliable number for the previous years that I had no
5 data. 02:15PM

6 Q With regard to the sheet that deals with
7 margin of error, did you prepare or assist in
8 preparing -- let me back up. On the one we just
9 looked at with the numbers, did you do the numbers
10 yourself or did you get any help from anyone else? 02:15PM

11 A I entered these numbers myself if that's what
12 you are asking.

13 Q Did anybody else assist you in preparing these
14 numbers that are reflected on this chart,
15 spreadsheet that's attached in Exhibit No. 5? 02:16PM

16 A No. I'm the one that did these numbers.

17 Q Okay. Now, with regard to the chart that
18 speaks to the margin of error, did you prepare that
19 chart?

20 A I did not physically enter the 1 percent, 5
21 percent, 10 percent. 02:16PM

22 Q Who did?

23 A I believe that was Chris Dolan is his name.
24 He's with counsel.

25 Q Is he a lawyer or is he -- 02:16PM

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1 A I believe he is a lawyer, yes, sir.

2 Q All right, and what did you do; did you
3 provide him the numbers that were entered by him on
4 this chart?

5 A Originally I sent him the two sheets that we 02:16PM
6 talked about previously.

7 Q All right.

8 A And it came back that I either missed it or
9 whatever, but we needed to give a percent error in
10 those numbers, and that's when we talked about it 02:16PM
11 and entered this.

12 Q Okay. Did you provide him the information
13 that was entered showing the margin of error?

14 A Yes, yes, sir.

15 Q All right, and how did you determine the 02:17PM
16 margin of error that you gave him, Mr. Dolan?

17 A My best estimate.

18 Q Okay. Did anyone assist you in coming up with
19 that best estimate?

20 A No, sir. 02:17PM

21 Q Let me have that back. Do you know what's
22 referred to as the TFS system?

23 A I believe it is the system that our
24 accountants used for production data.

25 Q And do you have access to that in your office 02:17PM

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1 or your personal computer in your office?

2 A No, sir.

3 Q Do you have access to the breeder system from
4 the computer at your office?

5 A No, sir. 02:18PM

6 Q Does anybody in the Springdale facility have
7 access to either of those computer programs?

8 A Our accountants would or accounting ladies
9 would.

10 Q And that would be Brenda Roe? 02:18PM

11 A Yes, sir.

12 Q Anyone else?

13 A Some of her clerks. I mean she has clerks
14 that work with her. They may have access to it.

15 Q Let me hand you what's been marked as Exhibit 02:18PM
16 No. 6 and ask you if you've seen that document.

17 A Yes, sir, I have seen this document.

18 Q This is an E-mail in the first page from you
19 to Mr. Maupin, is it not, on April 11, 2005?

20 A Yes, sir. 02:18PM

21 Q And the subject of it is farms sorted by
22 watershed dot XLS. Do you see that on the first
23 page as the subject line?

24 A Yes, sir.

25 Q And the next page, which follows in numerical 02:19PM

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1 order on Bates stamp 121759, describe to the court
2 what that document is.

3 A This document was created when we were still
4 in the Precision Ag -- trying to get the Precision
5 Ag model going. Nobody really knew or had any 02:19PM
6 estimation of the amount of litter being produced
7 and -- anywhere. I created this just as a rough
8 estimate. There's no hard data in here at all but
9 the rough estimate just to give us an idea as if the
10 Precision Ag model was successful and it continued 02:19PM
11 to grow, what could we -- what was our limits or our
12 estimated limits.

13 Q Was this document created on or about 12-14-04
14 as shown in the upper right-hand corner?

15 A That is the date. I assume that's when it was 02:20PM
16 created.

17 Q How long did it take for you to put this
18 document together?

19 A I don't remember.

20 Q Did anybody assist you in the preparation of 02:20PM
21 this document?

22 A The -- I got a calculation of -- from Tim
23 Maupin that they used in Virginia for estimating a
24 rough estimate of litter production. So I would
25 have got that from him. Everything else would 02:20PM

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1 have -- I would have done.

2 Q Okay, and did someone ask you to put this
3 together for the Precision Ag model?

4 A Sir, I don't know if -- I think because I was
5 involved in that Precision Ag model, I think I did 02:21PM
6 it on my own.

7 Q Did you share it with anybody besides Mr.
8 Maupin as shown on the cover E-mail?

9 A I do not believe so.

10 Q Where was the -- I assume this was an Excel 02:21PM
11 spreadsheet that you used?

12 A Yes, sir. This is an Excel spreadsheet.

13 Q Where did that Excel spreadsheet reside; on
14 your computer?

15 A Yes, sir. 02:21PM

16 Q Was it on the server or was it on the hard
17 drive?

18 A Sir, I'm not -- I don't know if it's on the
19 server or my hard drive.

20 Q Okay. Can you access that for me today? 02:21PM

21 A No, sir, I cannot.

22 Q Do you know whether this form still exists in
23 your computer?

24 A Yes, sir.

25 Q It does? 02:21PM

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1 A Yes, sir, but let me back up. You asked if I
2 could access it today. If I was at my computer, I
3 could access it. Can I access it from here, no.

4 Q I didn't intend for you to access it from
5 here --

02:22PM

6 A Okay.

7 Q -- in this deposition, but you have access to
8 this same form today at your computer, wherever it's
9 created?

10 A Yes, sir.

02:22PM

11 Q The headings under Washington County, Benton
12 County, Oklahoma and then breeders, are those --
13 except for the breeders, are those growers' names
14 that we're seeing in that first column?

15 A Yes, sir.

02:22PM

16 Q And the brood houses, the number of brood
17 houses that are located at that facility with that
18 grower?

19 A Yes, sir.

20 Q And the grow-out houses are the number of
21 grow-out houses that grower would have in the next
22 column?

02:22PM

23 A Yes, sir.

24 Q And in the bird type, an RH would be a regular
25 hen; correct?

02:23PM

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1 A Yes.

2 Q BH would be a big hen?

3 A Yes, sir.

4 Q BT would be a big tom?

5 A Yes, sir.

02:23PM

6 Q And I don't see any other toms listed there.

7 The heads placed per flock, where would you get that
8 number?

9 A I don't remember where I exactly got that

10 number. I could have gotten it off of the contract.

02:23PM

11 Q Flocks per year, where would you know -- how
12 would you know what that number would be?

13 A That's just an estimation of what I assumed

14 how many -- how we were turning flocks, the weeks in

15 between flocks. I mean I used five and a half. You

02:23PM

16 don't get a half a flock but --

17 Q Over a period of years, it might average five
18 and a half?

19 A It might. I was just trying to average -- it

20 looks like we're turning our farms -- our contract

02:24PM

21 farms are getting a flock here. If you average it

22 out, this is an average, just an average estimated

23 number.

24 Q The next column says heads placed per year.

25 That's just a function of multiplying the placed and

02:24PM

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1 flocks per year to get the number; correct?

2 A I believe so, yes, sir.

3 Q And the number of tons of litter per year,
4 that's based on the estimates Mr. Maupin gave you,
5 roughly 7,000 pounds or 7,000 tons for hens and
6 9,000 tons for toms?

02:24PM

7 A 7 tons per thousand birds placed.

8 Q I'm sorry, I did misspeak. I know Mr. Maupin
9 testified and we know what he said.

10 MR. TUCKER: You were very confusing to me
11 there.

02:24PM

12 MR. WALKER: He wants the number to be as
13 big as possible.

14 Q You got it from Mr. Maupin because he had a
15 rule of thumb he used?

02:24PM

16 A They had a rule of thumb that they used in
17 Virginia, yes, sir.

18 Q Okay, and you had available to you, I assume,
19 numbers showing the size of the houses that each of
20 these growers operate in, do you not?

02:25PM

21 A There is a book that the grow-out operation
22 has that has the size of houses in them, yes.

23 Q Okay. In this same exhibit, there are several
24 pages but they're all redacted in black, and then it
25 goes to the end at Bates 121763. This is a document

02:25PM

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1 dated 4-23-04 at the top. Do you know what this
2 document is?

3 A I believe it is -- I believe these other
4 sheets were from other growers from other areas, and
5 this sheet is just a summary, if you will, of all of
6 the sheets on one sheet.

02:25PM

7 Q Okay. This represents that in the Illinois
8 River watershed there are a number of farms, 43;
9 correct; is that what it says?

10 A That's what it says.

02:26PM

11 Q And of that, you have brood houses of 44;
12 correct?

13 A Yes, sir.

14 Q And 117 grow-out houses; correct?

15 A Yes, sir.

02:26PM

16 Q That, in fact, if you look back at the
17 spreadsheet is the same number that's reported on
18 that spreadsheet?

19 A Yes, sir.

20 Q All right. This document that's redacted, and
21 it has the totals at the end, what's the purpose for
22 this document; do you know; why does it even exist?

02:26PM

23 A I created it to -- as I said before, when we
24 were in our Precision Ag model, I really had not
25 even a rough estimate of litter that was being

02:27PM

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1 produced by our contract producers. Tim Maupin had
2 come from Rocco. They kind of had a formula that
3 they used. I didn't know how big Precision Ag could
4 grow, and so I created this document to just give me
5 a very rough idea, you know, if it took off and went
6 like gangbusters and really grew, what could we grow
7 to. So I didn't know.

02:27PM

8 Q So when I see the line that says watershed
9 total, and it's greater than the Illinois River
10 watershed, do you know what other watersheds would
11 be included in your calculations?

02:27PM

12 A Yes, sir.

13 Q What would it be?

14 A White River, Eucha-Spavinaw and Sugar, Little
15 Sugar or Elk River. I don't remember what the other
16 one was, but that was -- I think there was four. I
17 think I've done four of them.

02:28PM

18 Q All right, and in each of those there would be
19 Cargill contract growers located in those
20 watersheds; is that the purpose?

02:28PM

21 A Yes, sir.

22 Q Now, this document, Exhibit 6, I believe it
23 was dated December of '04; correct? You testified
24 that end of '04 is about when Precision Ag folded or
25 quit operating; correct?

02:29PM

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1 A Sir, I don't know the exact date that we
2 started. It may have been '05. I don't know the
3 exact date that we kind of stopped or couldn't make
4 it go any further.

5 Q What would you have to look at to refresh your 02:29PM
6 recollection to testify more accurately as to the
7 date that Precision Ag ceased operating?

8 A I guess it would be the last litter sale that
9 we made.

10 Q All right, and since this is dated December of 02:29PM
11 '04 but your cover sheet and E-mail is April 11th,
12 2005, can you tell me why you were sending this to
13 Mr. Maupin some four months later?

14 A No, sir, I do not and, sir, I can't tell you
15 -- I may have updated this on 12 -- I don't know 02:29PM
16 when I created this. I could have created this
17 before 12-14-04. Growers are retiring and not
18 growing anymore and if you -- like I say, if you
19 notice, on this one, I have a blank, No. 10, I don't
20 know what grower was in there but obviously they 02:30PM
21 were gone. So I can't tell you I was doing this.
22 But I know or I tried to as if there's changes, I
23 put a new updated number up there.

24 Q What page are you referring to that you just
25 said if you look at No. 10? 02:30PM

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1 A 121759.

2 Q Okay, and Item No. 10 is the blank at the top,
3 first grouping; correct?

4 A Yes, sir.

5 Q Thank you. Let me hand you Exhibit No. 7 and 02:30PM
6 ask you if you've seen that document before. This
7 is an E-mail from you, again September 6th, '05 to
8 Mr. Maupin with a copy to Mr. Ward; do you see that?

9 A Yes, sir.

10 Q The subject is the same as we looked at 02:31PM
11 before, farms sorted by watershed dot XLS?

12 A Uh-huh.

13 Q And this one has another line on it that shows
14 attachment, farms sorted by watershed XLS; do you
15 see that? 02:31PM

16 A Yes, sir.

17 Q Okay. Now, what was the reason that you were
18 providing in September of '05 to Mr. Maupin and
19 these other you copied to information about the
20 grower list in the Illinois River watershed? 02:31PM

21 A At that time -- if you will look at 95366, one
22 of the changes that -- one of the things we were
23 doing at that time is we were trying to work on
24 getting federal monies for contract producers to
25 help build storage facilities if they didn't have 02:32PM

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1 any, and one of the changes I had done to this was
2 we were trying to figure out how much storage space
3 they would need to store half of their estimated or
4 what I had estimated half of the estimated litter
5 going through all those calculations, and that's
6 what these two columns right here are for.

02:32PM

7 Q The last two columns on the right?

8 A Yes, sir. So this -- I think they were -- I
9 mean, I wasn't in Washington, D.C., but I think Tim
10 Maupin and some others and maybe some others from
11 other companies were trying to see if there was
12 money available to help assist our contract growers
13 for some storage facilities like they did in
14 Virginia, and I was asked at that time, well, how
15 much -- if we got it, how much storage facilities
16 would the contract growers need to store half of the
17 litter, and that is the updated. That's what this
18 has done.

02:32PM

02:33PM

19 Q And that same spreadsheet has the names of the
20 growers in the Illinois River watershed, correct,
21 including the breeder farms?

02:33PM

22 A Yes, sir.

23 Q And you prepared this document yourself;
24 correct?

25 A Yes, sir.

02:33PM

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1 Q And September 6, '05, as I understand your
2 testimony, this has nothing to do with the Precision
3 Ag model but rather storage facilities?

4 A Yes, sir.

5 Q All right, and -- 02:33PM

6 A Well, attempting to get money but, yes,
7 attempting to get money for the storage facilities
8 for the contract growers.

9 Q Did you prepare similar spreadsheets as we've
10 seen in Exhibits 6 and 7 that we're looking at now 02:33PM
11 for other watersheds?

12 A The four watersheds that --

13 Q Let me rephrase my question so you understand.
14 The 95366 sheet, the actual spreadsheet that you're
15 seeing here, did you prepare a similar spreadsheet 02:34PM
16 for any other watersheds that would look like this
17 one with similar data?

18 A Well, the other watersheds that are in here,
19 like the White that we talked about, I would have
20 done the same two columns for. 02:34PM

21 Q Okay. Would they be kept on a separate
22 spreadsheet?

23 A No, sir. It is one file.

24 Q One file, and would the Illinois River
25 watershed be on that same file? 02:34PM

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1 A Yes, sir, yes, sir.

2 Q Okay. So would it be a separate -- would it
3 be a workbook that had separate sheets in it, each
4 sheet representing a different watershed?

5 A This particular file has a page for the 02:34PM
6 Illinois. It has a page for the other three
7 watersheds that we talked about earlier, so --

8 Q All right, and then the redacted portions of
9 this exhibit, is that a summary of those
10 spreadsheets that you just described as different 02:35PM
11 sheets?

12 A The original, the one I originally did was a
13 summary of that. I don't know if I updated this one
14 to be a summary of everything on this version.

15 Q Okay. I guess my question could be this: 02:35PM
16 What I'm looking at, a redacted sheet here, would
17 that be the spreadsheet for a different watershed
18 similar to what we're seeing for the Illinois River
19 watershed?

20 A Yes, sir. 02:35PM

21 Q Okay. Did you discuss the Illinois River
22 watershed spreadsheet with Mr. Willardsen either
23 from Exhibit 6 or Exhibit 7 at any time?

24 A I do not recall if Mr. Willardsen -- if I
25 talked to Mr. Willardsen about it or if he's seen 02:36PM

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1 that spreadsheet.

2 Q Did you discuss the spreadsheets in either
3 Exhibit 6 or 7 with a Jennifer Henderson?

4 A No, sir. I do not recall that.

5 Q So that I understand, the heads placed per 02:36PM
6 flock times the estimated flocks would give you an
7 annualized number of total birds in a house for that
8 grower; correct?

9 A No, it is not an actual number.

10 Q I understand that you prepared it from other 02:37PM
11 documents and it might be some estimate, but if
12 you -- so that I understand, the heads placed per
13 year would be for that grower in all of its houses,
14 correct, based on the numbers you've used here? I'm
15 not asking whether they're accurate right now. 02:37PM

16 A No -- yes. The head placed per year is off my
17 estimation, yes, sir.

18 Q Okay, and what did you rely on to get heads
19 placed per flock; those flock settlement reports?

20 A No, sir. I could have used personal 02:37PM
21 knowledge. I could have gone to the contracts. I
22 don't recall where I got the actual numbers, but
23 they are -- it's just a rough estimate or a rough
24 average, and I don't remember where I pulled that
25 off. It could have been the contract number. 02:38PM

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1 Q You're still in Exhibit 7, are you not?

2 A I don't know. Yes, sir, I am.

3 Q The portion of that exhibit that shows the
4 redacted pages into the total page, is that in a
5 separate spreadsheet contained in your computer or
6 is it -- does it reside elsewhere?

02:38PM

7 MR. TUCKER: Could you reask that?

8 Q The pages that are printed out are in
9 electronic format somewhere; would you agree?

10 A Yes, sir.

02:38PM

11 Q And are they in your computer on your desk at
12 your office?

13 A Yes, sir.

14 Q And you don't know whether you stored it on
15 your hard drive or it's stored on the server;
16 correct?

02:39PM

17 A No, sir.

18 Q Do you know whether anybody else has access to
19 that electronic form that you've created that's
20 represented by this Exhibit 7?

02:39PM

21 A To my knowledge nobody else has access to
22 that.

23 Q Mr. Maupin testified, I think, that if
24 somebody wanted to know the bird numbers, you are
25 the guy to go to. Is that your opinion also,

02:39PM

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1 similar to these numbers we're looking at here?

2 A The bird numbers for what?

3 Q The growers in the Illinois River watershed on
4 an annual basis as you've shown here.

5 A Yes, sir. I could give a rough estimate. I 02:39PM
6 could find out the birds produced in the Illinois
7 River watershed.

8 Q And, in fact, in 2008 you did that, which is
9 the spreadsheets that we saw attached to that letter
10 from Dara Mann, correct, the ones that have color 02:40PM
11 coding on them; correct?

12 A Yes, sir.

13 Q And that's Exhibit No. 5?

14 A Yes, sir.

15 Q I'm going to hand you Exhibit No. 8 and ask 02:40PM
16 you to identify that document. That's another
17 E-mail from you to Archie Schaffer and another
18 string showing Schaffer to Mr. Willardsen on or
19 about August 29, 2006. Do you recall seeing that
20 E-mail in that time? 02:41PM

21 A I don't recall it but, yes, sir, I sent it.

22 Q It appears from this E-mail you were requested
23 by Mr. Willardsen to answer Archie Schaffer a
24 question about the number of houses that Cargill
25 had, grow-out and breeders in the IRW, does it not? 02:41PM

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1 A Yes, this page -- yes, sir, this page does
2 seem to do that.

3 Q So it appears then that Mr. Willardsen
4 recognized your ability to know the numbers of birds
5 in the Springdale complex by grow-out or breeder 02:41PM
6 production; correct?

7 A Sir, it doesn't say anything about birds. All
8 that is talking about is houses.

9 Q Number of houses, I stand corrected. He knew
10 you would be the guy to go to find out the number of 02:42PM
11 houses; correct?

12 A Yes, sir.

13 Q All right. Did Mr. Willardsen give you any
14 idea of why you were providing this information to a
15 Tyson representative? 02:42PM

16 A Well, I knew -- this information was given
17 from all companies that went to counsel. I believe
18 they -- I don't know why -- what all they were using
19 it for, but I know all the companies participated.

20 Q Did Mr. Willardsen give you any information as 02:42PM
21 to why he needed it or wanted it?

22 A I don't believe so. I don't recall if he did.

23 Q What was the source of the data that you used
24 in 2006 to determine the number of grow-out
25 production houses and the number of breeder 02:43PM

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1 production houses?

2 A I would have relied on Exhibit 7 or this
3 spreadsheet that we've been talking about.

4 Q Okay. Look at the next page of this document,
5 if you would, please. That appears to be a 02:43PM
6 spreadsheet, does it not?

7 A Yes, sir.

8 Q Is that a spreadsheet you would have prepared?

9 A No, sir.

10 Q Do you know who prepared it? 02:43PM

11 A No, sir.

12 Q It came from the Cargill files. The stamp at
13 the bottom is a Bates number attached to that
14 electronic file. You don't know who would have been
15 preparing this information? 02:43PM

16 A No, sir.

17 Q Looking at the next page, do you recognize
18 that portion of the spreadsheet that talks about
19 tons hauled September through December 2006, Bates
20 number 170612? 02:44PM

21 A I believe this spreadsheet is done by BMPs,
22 Inc.

23 Q Do you know what BMPs, Inc., is?

24 A It is an incorporation that the poultry
25 companies have -- I think it arose out of the City 02:44PM

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1 of Tulsa litigation that was created to help
2 contract producers remove litter if their nutrient
3 management plans said that that needed to happen.

4 Q This has for Cargill 228 tons for that time
5 period. 02:45PM

6 A Uh-huh.

7 Q Who would have supplied that information to
8 BMPs in order to get into this spreadsheet?

9 A BMPs would have kept their own records on
10 that. If a contract producer uses BMPs, Inc., they 02:45PM
11 would keep their records for that.

12 Q BMPs would keep their record?

13 A Yes, sir, any litter they would have handled.

14 Q Okay. So this is not a number that Cargill
15 produced and gave to BMPs of waste that it was 02:45PM
16 hauling?

17 A I do not believe so, sir.

18 MR. GARREN: We need to take a break to
19 change tapes.

20 VIDEOGRAPHER: We are now off the Record. 02:45PM
21 The time is 2:45 p.m.

22 (Following a short recess at 2:45 p.m.,
23 proceedings continued on the Record at 3:02 p.m.)

24 VIDEOGRAPHER: We are now back on the
25 Record. The time is now 3:02 p.m. 03:02PM

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1 Q Mr. Alsup, I've handed you Exhibit No. 9.
2 It's a rather large spreadsheet that was provided in
3 electronic format to us. Its Bates number at the
4 bottom is 158579. Have you seen that electronic
5 spreadsheet? 03:03PM

6 A No, sir.

7 Q Do you have any idea who would have prepared
8 this?

9 A I don't know when this was prepared, so I
10 don't -- I don't know who would have prepared it. 03:03PM

11 Q In the upper left-hand corner it shows a date
12 of October 11, 2004, and the title is square footage
13 by year barn built; do you see that?

14 A Yes, sir.

15 Q And do you know anybody in Cargill or in this 03:03PM
16 case it would be Turkey, LLC, would have needed this
17 data in the spreadsheet?

18 A The production manager at that time was Jim
19 Ward. I don't know if he's the one that created
20 this but he may have needed it for whatever reason. 03:03PM

21 Q Is Jim Ward still with the company?

22 A No, sir.

23 Q Do you know when he left?

24 A He retired last June.

25 Q Do you know where he resides today? 03:04PM

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1 A Do I know where he lives?

2 Q Yes, sir.

3 A In Fayetteville maybe. I don't know.

4 Q Okay. This document purports to show that

5 there are some houses as old as 1960 when this was 03:04PM

6 created in '04. Do you know whether or not that

7 remains true today, some of those houses are that

8 old and still in operation?

9 A I would have no idea when the houses were

10 built. 03:04PM

11 Q Is it a factor with regard to the age of the

12 house as to the number of birds that one might --

13 that you might place into that house? Let me ask it

14 a little simpler. Is the age of the house a factor

15 for the number of birds that might be placed in that 03:05PM

16 house?

17 A I would say it's more a factor of the

18 equipment in the house that determines that rather

19 than the age of the house.

20 Q Do you recognize the names of the growers 03:05PM

21 listed under the grower column as being any of those

22 in the IRW?

23 A Yes. Some of them are in the IRW.

24 Q Okay. Let me hand you what's been marked as

25 Exhibit No. 10 and ask you to look at that and see 03:06PM

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1 if you've seen this form before.

2 A Yes, sir, I have seen this before or seen a
3 type of report like this before.

4 Q This report is entitled turkey settlement
5 recap, is it not? 03:06PM

6 A The first page is, yes, sir.

7 Q All right, and on that first page it has a
8 date of August 3, 2007, do you see that, upper
9 left-hand corner?

10 A Yes, sir. 03:06PM

11 Q All right, and are you familiar with -- let me
12 ask this way: Are you able from your computer to
13 access this report that we see, the first page of
14 Exhibit 10?

15 A No, sir. 03:07PM

16 Q How would this report be prepared?

17 A Our accountant would have had to have prepared
18 it.

19 Q And that would be Brenda Roe?

20 A Yes, sir. 03:07PM

21 Q And do you know whether or not she prepares
22 this report for any particular person at Cargill
23 Turkey Production?

24 A I do not know who all she would prepare --
25 would have prepared a report like this for. 03:07PM

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1 Q Is this a report that you use in your daily
2 activities or operations?

3 A No, sir.

4 Q Is this report you might have referred to
5 earlier as a report that you would use to determine 03:07PM
6 the heads produced annually by a particular grower?

7 A Not this particular page. No, sir, I would
8 not use this report to do bird production numbers
9 for a year because it's not what it has.

10 Q Okay. This shows -- let me ask you this: Do 03:08PM
11 you know what the codes at the top of the page stand
12 for where it has the term all to the right side of
13 it?

14 A I don't know how this report operates. I'm
15 assuming that would be something that -- no, I don't 03:08PM
16 know.

17 Q Okay. The upper right-hand corner under Page
18 1 it says TFR 475; do you see that?

19 A Yes, sir.

20 Q Is that a report number that is used on a 03:08PM
21 regular basis?

22 A Sir, I don't know what this report number or
23 what that number means.

24 Q Do you know whether Cargill keeps growers by a
25 grower number? 03:08PM

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1 A I believe that every grower has a number.

2 Q All right, and in the right -- in the columns
3 on the right, do you see where it says grower
4 number?

5 A Yes, sir. 03:09PM

6 Q And number 170 there?

7 A Yes, sir.

8 Q All right, and that appears to be that
9 grower's number?

10 A Yes, sir. 03:09PM

11 Q If you go to the next page, we see the same
12 grower number, but on that page we see in the column
13 under grower name Aday Farm; do you see that?

14 A Aday, yes, sir.

15 Q Go back to the first page and I'll ask you 03:09PM
16 about some of these columns, if you know what they
17 mean. When it says head started, is that the number
18 of heads that are placed?

19 A Yes, sir, for a particular -- I don't know
20 what particular time this is run for but, yes, sir. 03:09PM

21 Q Okay, and it says heads produced. That would
22 be the number of birds after mortality from heads
23 placed?

24 A Yes, sir.

25 Q And heads sold, that would be after the 03:09PM

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1 heads -- after the chickens or the turkeys are at
2 the plant after condemnation of turkeys?

3 A I believe that would be after whole bird
4 condemnation, yes, sir.

5 Q Do you know whether or not this particular 03:10PM
6 form where it says heads produced under all flocks
7 represents what it says, all flocks, all heads
8 produced for this grower for the period of time
9 that's being shown here?

10 A Yes, sir, that's what it appears to say. 03:10PM

11 Q And when it says in the upper left corner, it
12 says placement month all, placement year all and
13 processed month all, processed year all, would
14 you -- what do you know that to mean?

15 A To me that would mean all the data that would 03:10PM
16 be in the computer. That would be all.

17 Q Okay. Under the heading, gross live, and the
18 first column over to the last columns, percents and
19 averages, do you see the columns hens, toms, all
20 flocks? 03:11PM

21 A This gross live and these columns that you're
22 talking about?

23 Q Yes, sir. All the way across to underneath
24 hens, toms, all flocks, percents and averages?

25 A Yes, sir. 03:11PM

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1 Q Is 17 pounds what appears to be an average for
2 the hens produced as shown on this document, or do
3 you know?

4 A That's what it says, yes, sir.

5 Q Is that pretty much what you would expect, a 03:11PM
6 17-pound hen?

7 A We do not raise a 17-pound hen.

8 Q What do you raise?

9 A We raise about a 14 to a 14 quarter-pound hen,
10 and as stated earlier, back a couple of years ago we 03:12PM
11 raised a big hen that would have been 22 pounds. So
12 because of that average, I'm assuming that it took
13 all hens, whether it was a regular hen we call it
14 and the big hens and averaged that weight together.

15 Q Okay, and looking at the size of the tom, 03:12PM
16 41.12 pounds, do you expect it to be a regular or
17 regular and big?

18 A No. That would just be a big.

19 Q A big tom, all right. Now, going to the next
20 page, this appears to be report number TFR 430 and 03:12PM
21 it's on Bates number 123575. Aday Farm is a farm
22 that's in the Illinois River watershed, is it not?

23 A Yes, sir.

24 Q Do you know what this report is intending to
25 reflect? 03:13PM

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1 A This report looks like a finished flock recap
2 of -- I mean some production data from flocks that
3 have been processed from the Aday Farm.

4 Q Okay, and this is what looks like -- if you'll
5 flip over a couple of pages, there appears to be a 03:13PM
6 total of about four pages in this report, which is
7 dealing with a report form TFR 430.

8 A Okay.

9 Q It appears to show different bird types being
10 produced from big toms, big hens and total or just 03:13PM
11 hens; do you see that?

12 A Yes, sir.

13 Q All right. From either this report, this
14 four-page report, form number TFR 430, or the first
15 one, TFR 475, are you able to tell us how many birds 03:14PM
16 are produced by a grower, by flock and year?

17 A Okay. Ask that one more time.

18 Q If I look at this form, am I not -- am I able
19 to tell how many birds are produced by Aday Farms on
20 an annual basis? 03:14PM

21 A What you're seeing is birds sold, data
22 from birds -- I'm sorry, birds processed from the
23 Aday Farm for the calendar year.

24 Q Okay. Let me ask you this: When you see this
25 column on 123575 under pounds sold, what is your 03:14PM

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1 understanding what pounds sold means?

2 A Pounds sold would be pounds processed after
3 whole bird -- after whole bird condemn and maybe
4 parts condemn.

5 Q So if you divide that by the average weight 03:15PM
6 that is shown in the column to the left of it, what
7 does that give you; does it give you the total
8 birds?

9 A Divide what?

10 Q See where the column in front that says 03:15PM
11 average weight?

12 A Yes, sir.

13 Q And if you go to the next page, they're both
14 totaled. You would have an average weight of 14.66,
15 total pounds of a million 895; do you see that? 03:15PM

16 A Yes, sir.

17 Q If you divided those, would it give you the
18 total birds produced in your information, to your
19 knowledge?

20 A No, sir, not if that pounds sold is after 03:16PM
21 parts condemned. I don't know -- when it says
22 pounds sold, I am assuming that that is after
23 condemns come out of them.

24 Q This report was generated on August 7th --
25 August of '07. We saw that in the upper left-hand 03:16PM

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1 corner.

2 A Yes, sir.

3 Q If you flip back a little further, we'll go

4 to -- I think there's -- maybe we'll get it

5 elsewhere. I apologize. I thought there was

03:16PM

6 another set of forms in here similar but a different

7 date. We'll pick them up later on a different

8 exhibit. Do you have any knowledge who would use or

9 rely on this form in Cargill, in Cargill Turkey

10 Production?

03:17PM

11 A I do not know if anybody uses this in their

12 daily business. Jason Witt, the production manager,

13 I guess if he wanted to look at a particular grower,

14 could use this.

15 Q Let's look at Exhibit No. 11 and ask you

03:17PM

16 whether or not you're familiar with that form. This

17 is called a closed flock expense statement. Do you

18 know what that is?

19 A Yes, sir. That would be information regarding

20 a flock after it has been processed.

03:18PM

21 Q Is this the form you referred to in your

22 earlier testimony that you would go to to determine

23 the number of birds produced by a grower on an

24 annual basis?

25 A No, sir.

03:18PM

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1 Q Okay. Do you know who uses this form in
2 Cargill?

3 A The production manager and the flock
4 supervisors and the accountants.

5 Q Is this same form -- this one is dated in 03:18PM
6 January of 2002. Is this same form -- in fact, it
7 is. If you look at the Bates number 13230 and hold
8 your place there, 13230 Bates number. 230 is the
9 last digits.

10 A Okay.

11 Q You see in the upper left-hand corner it's
12 dated July of '05?

13 A Yes, sir.

14 Q It's the same form, just a different date, is
15 it not, as the one we looked at, the very first page 03:19PM
16 of this set?

17 A Yes, sir, it appears to be.

18 Q All right, and the one dated in '02 would have
19 been used by Cargill, Inc., correct, first page of
20 this exhibit at page -- 03:19PM

21 A Yes, sir.

22 Q All right, and then the one that's dated in
23 '05 would be used by Cargill Turkey Production, LLC,
24 wouldn't it?

25 A Yes, sir. 03:19PM

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1 Q I believe I asked you, did you refer to this
2 form or this report to assist you in preparing the
3 spreadsheets that we saw in Exhibits 6 and 7?

4 A No, sir.

5 Q Okay. Let's look at Exhibit 12. This is 03:19PM
6 another form called the turkey presettlement
7 calculation flocks, placed month of '04. It's a
8 form number TFR 320; do you see that?

9 A Yes, sir.

10 Q And are you familiar with this form? 03:20PM

11 A I have seen this before, yes, sir.

12 Q Is this a form you would have used to prepare
13 Exhibits 6 and 7, the spreadsheets that we saw
14 there?

15 A No, sir. 03:20PM

16 Q Do you know who would access or have need to
17 review this form and the work at Cargill or Cargill
18 Turkey Production?

19 A The same people, the production manager, flock
20 supervisors and accountants. 03:20PM

21 Q Okay, and I'm assuming by looking at this and
22 ones that are similar to this, this is the type of
23 form that the accountant, Brenda Roe, would have to
24 pull off?

25 A Yes, sir. 03:20PM

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1 Q Do you have any idea how often she pulls these
2 kind of reports off?

3 A Sir, I think she pulls it after a flock is
4 processed.

5 Q So for every flock for every grower or every 03:21PM
6 flock for a number of growers?

7 A Every flock that is processed.

8 Q You say every flock. Would a flock in
9 Cargill's terminology include more than one grower
10 because it's placed at the same time? 03:21PM

11 A No, sir. A flock is --

12 Q A single set of birds for a single set of
13 grower -- of a single grower?

14 A Yes.

15 Q Okay. When these reports that we've seen in 03:21PM
16 exhibits like 10, 11, 12 and 13 are printed off,
17 where are they retained, if you know?

18 A I do not know.

19 Q Does a grower see any of these reports that
20 we've seen in Exhibits 10 through 13 or 10 through 03:22PM
21 12; are they provided these forms?

22 A Sir, they do get information regarding their
23 flocks. I can't tell you which ones they get, but
24 they do get information.

25 Q Do you know for a fact that they get either 03:22PM

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1 Exhibit 10, 11 or 12?

2 A I do not know for a fact, no, sir.

3 Q Let me hand you what's been marked as Exhibit
4 13. Do you know what that document is?

5 A I do not know what this document is. It looks 03:23PM
6 like a breeder -- a report that deals with the
7 breeder operations.

8 Q Did you refer to this report or similar
9 reports in this format in order to prepare Exhibit 6
10 or 7 spreadsheets? 03:23PM

11 A No, sir, I did not, not for the breeders.

12 Q Let me hand you what's been marked as Exhibit
13 14 and ask if you can identify that document.

14 A This is a poult placement report for a
15 particular week. 03:24PM

16 Q What does this form tell us when you look at
17 it?

18 A When a grower is going to get baby turkeys and
19 the date.

20 Q Okay. Is this something you work with or 03:24PM
21 utilize in your daily activities and
22 responsibilities, Cargill Turkey or Cargill, Inc.?

23 A I do use this in part of my scheduling duties,
24 yes, sir.

25 Q And tell me how you would use this report. 03:24PM

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1 A After a flock is placed, I would get this
2 report and I would take that placement. I have a
3 report that I do -- I think we call it a
4 thirteen-week projection. I enter the numbers from
5 each farm onto an Excel spreadsheet and put a
6 projected week of processing on it. It shows the
7 age, the estimated age that they're going to be that
8 week. I think it has estimated weight from my rough
9 calculations. I have an average livability on it.

03:25PM

10 I think it has breed on it and hatchery source on
11 it.

03:25PM

12 Q Okay. Go over several pages to the Bates
13 number 0738 where it says placement projection form.

14 A Yes, sir.

15 Q What is that form?

03:25PM

16 A This is a form that I do. I update it maybe
17 every two weeks, three weeks, but it is to give a
18 flock supervisor a general idea of the week, that
19 any farms that they may be in their territory, they
20 can pass that on to the growers, that in four weeks,
21 you're due to get a flock of birds-type deal.

03:26PM

22 Q Okay. Is that the only reason you use this
23 form?

24 A Yes, sir.

25 Q Okay, and you prepare the form yourself?

03:26PM

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1 A Yes, sir.

2 Q The next page, 739, can you tell me what that
3 form is and how it's used?

4 A This is the thirteen-week projection that I
5 was telling you about earlier.

03:26PM

6 Q All right. Parts of it have been redacted
7 and I assume because it's not IRW growers. You
8 prepared this spreadsheet; this is one you referred
9 to?

10 A Yes, sir.

03:27PM

11 Q What's the purpose of having this what you
12 call thirteen-week production or projection?

13 A I am -- part of my scheduling duties is to
14 keep the processing plant full. When we have a down
15 day or if the birds or our regular hens are getting
16 too big and we have to kill a Saturday, I can look
17 out three to four months and give me a general idea
18 of what's out there. I can help inform the
19 processing plant, help inform sales. Like right
20 now, going into summer, it would show that the bird
21 weights are dropping and that will help sales and
22 the plant decide production schedules.

03:27PM

03:27PM

23 Q Look at Page 744. It's a different form
24 called catching crews farm schedule. Do you have
25 anything to do with preparing that form?

03:28PM

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1 A No, sir, I do not.

2 Q Okay. Look at the next page that's actually
3 -- breaks in sequence number but it's actual poult
4 placement. Do you calculate the totals that are
5 seen in the block here that says total Gentry hatch, 03:28PM
6 total O/S sale?

7 A No, sir, I do not.

8 Q Who generates the numbers that are redacted
9 there in that form?

10 A It would be the lady at the hatchery. I 03:28PM
11 believe her first name is Katie is the one that does
12 this report.

13 Q Is this a form you would normally use or work
14 from in your daily activities?

15 A These numbers here does not bother -- I mean I 03:28PM
16 do not use these. This is part of this.

17 Q The actual poult placement, right. I thought
18 it brought some totals down, but you don't use that?

19 A I don't use that.

20 Q All right. Let's look at Exhibit 15, if you 03:29PM
21 would, please, and tell the court what that document
22 is.

23 A It appears to be a spreadsheet that has a
24 grower, contract date and flock place date on it.

25 Q Is this a form that you create or use in your 03:29PM

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1 work?

2 A No, sir.

3 Q Who would be creating it or using it?

4 A Maybe the lady that does the contracts, Nayda

5 Tucker or Brenda Roe. 03:30PM

6 Q Let me hand you what's marked as Exhibit 16.

7 Can you tell me what that document is?

8 A It says year-to-date primary operating report.

9 Primary -- I'm assuming this is our processing plant

10 spreadsheet. 03:30PM

11 Q You don't use this form in your duty or

12 responsibilities?

13 A No, sir.

14 Q Let me hand you what's been marked as Exhibit

15 39. 03:31PM

16 MR. GARREN: You need to mark that, John.

17 Q Do you know what that document is?

18 A No, sir, I don't.

19 Q So I take it you don't use this document in

20 your daily responsibilities or duties for Cargill 03:32PM

21 Turkey?

22 A No, sir.

23 Q You've never seen a form similar to this or at

24 any time?

25 A I do not remember seeing this form, no, sir. 03:32PM

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1 Q There's -- moving back, there's a change in
2 form at Page 274184. It's called breeder production
3 inventory report; do you see that, sir?

4 A Yes, sir.

5 Q I think the very last page shows for 03:32PM
6 Springdale, Arkansas. Is this a form that you use
7 in your work or activities?

8 A No, sir.

9 Q Do you know what is meant by the term
10 capitalized that's used in this form? 03:32PM

11 A Capitalized would be when a flock comes into
12 egg production.

13 Q And do you know what TB amortized means?

14 A No, sir.

15 Q Do you know what amortized TD means? 03:33PM

16 A No, sir.

17 Q Let's see if we can find the farm audits
18 again, Exhibit 17, in here. Can you see if you can
19 locate Exhibit 17, sir, the farm audits? It will
20 look like this. We talked a little bit about these 03:34PM
21 earlier, but I have a couple other questions I'd
22 like to go over with you. Were these farm audits
23 also conducted for the Cargill breeder farm
24 locations?

25 A I believe they would have been conducted, yes, 03:35PM

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1 sir.

2 Q Do you know for a fact? I'm not asking --

3 A No, sir, I do not know for a fact.

4 Q All right. Who would know for a fact whether

5 they had been used to rate or check the breeder 03:35PM

6 farms?

7 A The breeder farm manager.

8 Q And that person at this time would be --

9 A At this time is Gerald Duncan.

10 Q And he's been there for some time, has he not? 03:35PM

11 A No, sir.

12 Q Who was there before him?

13 A Charlie Delap.

14 MR. TUCKER: Just to clarify your questions

15 and answers, you are talking about Exhibit 17; is 03:35PM

16 that right?

17 MR. GARREN: I'm talking about Exhibit 17,

18 that the farm audit would have been used for the

19 breeder farm facilities.

20 MR. TUCKER: You're asking him about 03:36PM

21 breeder farm but your exhibit is the contract farm

22 exhibit; is that right?

23 MR. GARREN: It says contract farm but I

24 asked him whether or not they use it for breeder

25 farms. 03:36PM

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1 MR. TUCKER: I understand your question.

2 Q With regard to an audit done on a contract
3 farm, is there a procedure for non-compliance with
4 issues relating to those items shown on the audit?

5 A If an issue is found, the flock supervisor is 03:36PM
6 to address it with the contract producer. They talk
7 about it, come up with a corrective action.

8 Q What are the consequences for a grower who
9 fails to comply with a corrective action?

10 A If it is serious enough and the grower has not 03:37PM
11 corrected it or refused to correct it, new flocks
12 could be withheld. I mean, we could withhold
13 placements until that is corrected.

14 Q Are you aware at any time, sir, in your
15 experience with Cargill or Cargill Turkey Production 03:37PM
16 of birds being withheld for issues relating to
17 litter handling or litter disposal?

18 A No, sir.

19 Q Let's look at Exhibit 20 then, if you would,
20 please. I'll pull it out for you. Have you seen 03:37PM
21 that document before?

22 A Yes, sir. This is a spreadsheet that I put
23 together.

24 Q What was the purpose for this spreadsheet?

25 A We wanted to take a snapshot look at where the 03:38PM

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1 contract producers were, what they had, what
2 counties they were in.

3 Q I notice you have on there NMP expiration
4 date. Tell the court what that's there for.

5 A If they had a nutrient management plan -- I 03:38PM
6 believe all plans have a five-year date on them.

7 Q I notice that that column appears to be empty
8 all throughout. Is there a reason for that?

9 A We may not have used it. I may have created
10 this before I knew exactly what all the data that we 03:39PM
11 wanted to collect and we may not be -- we may not
12 have used that at all.

13 Q I notice on the column -- actually on Row No.
14 5 under the name Bickford where it says nutrient
15 management plan, it says no. Do you see that? 03:39PM

16 A Yes, sir.

17 Q And are you familiar with that circumstance of
18 the Bickford farm not having a nutrient management
19 plan?

20 A I know the Bickford farm. 03:39PM

21 Q Do you know where it's located?

22 A Yes, sir.

23 Q Where is it located?

24 A In Lincoln.

25 Q Okay. So that would be Arkansas; correct? 03:40PM

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1 A Yes, sir.

2 Q All right. Was anything done with regard to
3 Bickford not having a nutrient management plan?

4 A Sir, if -- probably not if he was signed up
5 for one. 03:40PM

6 Q Okay, and this form doesn't reflect whether he
7 was or wasn't?

8 A No, it does not.

9 Q When this form says compost needs attention,
10 A-T-T-N, what does that mean? 03:40PM

11 A The flock supervisor may have seen something
12 in his compost shed that he felt needed some
13 correction.

14 Q Okay. What does a grower use for a compost
15 shed; what happens; how is it used? 03:40PM

16 A What is the process of composting a dead bird?

17 Q What do they use a composter for on a turkey
18 farm?

19 A A composter is used to compost mortality.

20 Q Mortality means the daily loss of birds in the
21 barns? 03:41PM

22 A Yes, sir.

23 Q All right, and is that done with combination
24 of poultry waste or poultry litter?

25 A Poultry litter is a component of that, yes, 03:41PM

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1 sir.

2 Q Okay. Is anything else besides the bird
3 carcass and the poultry litter used in the compost?

4 A Bedding material can be used, straw.

5 Depending on carbon sources needed, straw could be 03:41PM
6 used.

7 Q That's in addition to the other bedding
8 material that exists?

9 A If there wasn't -- if they didn't have any
10 readily available or something, if they had some old 03:41PM
11 hay or anything that could give them a carbon source
12 and then water, if needed.

13 Q Okay. So used litter is part of the
14 components placed into a compost; correct?

15 A Yes, sir. 03:42PM

16 Q Okay, and you're saying in addition to that,
17 sometimes another carbon source, such as hay or
18 straw, might also be added?

19 A Yes, sir.

20 Q Okay. Did you make the calculation in the 03:42PM
21 last column that says max or maximum farm population
22 based on little hens?

23 A That would be based on what that particular
24 grower was receiving at that particular time. All
25 of these farms do not raise regular hens, no, sir. 03:42PM

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1 Q Okay, and so none of them raise toms then I
2 take it that you've listed?

3 A No. It would reflect what bird type they were
4 raising at that time with zero mortality.

5 Q All right. Tell me again what the heading of 03:42PM
6 that column, the very last column on the right, on
7 Page 258091 means.

8 A I am mistaken. It is based on little hen
9 placement.

10 Q Can you tell me why that was done in that way? 03:43PM

11 A Yes, sir. Back when they were -- the federal
12 government was looking at redoing CAFO regulations,
13 we did not know how many of our farms or where they
14 would fall in the rankings that the federal
15 government was doing. It was based on head count. 03:44PM

16 Although some of these farms weren't raising little
17 hens, we wanted to know because little hens are
18 smaller, they require less square feet. So we would
19 place more little hens, regular hens than what we
20 would big toms. So in an extreme case, if all of 03:44PM

21 the farms received little hens and had zero
22 mortality, what would the head count be, and what we
23 were trying to do was in a worst case -- not worst
24 case scenario but in a maximum excessive scenario,
25 where would they call in the animal unit numbers and 03:44PM

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1 would they qualify under the new CAFO regulations
2 that the federal government was looking at.

3 Q Okay. So this was in anticipation of new
4 federal regulations that you made these
5 calculations? 03:45PM

6 A That they were in the works, yes, sir.

7 Q With regard to the data that provides the
8 source for the material -- let's start over. What
9 is the source of the data that you have compiled in
10 this Exhibit No. 20 on this spreadsheet? 03:45PM

11 A The source, if they had a nutrient management
12 plan or not, the mortality disposal method, that
13 data would have probably -- or in a litter stacking
14 shed, those three columns would have come from the
15 flock supervisors. 03:45PM

16 Q All right.

17 A The county that they are in, I could have
18 gotten that from my own knowledge or from -- I don't
19 know if any of the -- if we have that by county in
20 our database or not, but we could, and I would have
21 hand calculated the bird numbers. 03:46PM

22 Q Okay. What criteria does Cargill use to deem
23 a composter as needing attention?

24 A Sir, there's nothing written down. If birds
25 are improperly covered, if it is -- weeds have grown 03:46PM

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1 up or if one of the walls is about to fall down. I
2 mean, there's not a hard facet of rules about
3 whether it needs attention. That would be an
4 inspection by site or by the flock supervisor site
5 specific.

03:47PM

6 Q So a grower doesn't have specific criteria to
7 know what to do; it's somewhat subjective on the
8 part of the flock supervisor whether he would place
9 it as needing attention or not on your form?

10 A If a flock supervisor in his experience thinks
11 that the composter needs attention for whatever
12 reason, then he could say that.

03:47PM

13 Q Okay. Let's look at Exhibit 21. Well, let me
14 follow up on that. If it does need attention, who
15 follows up to see that the corrective measures that
16 are suggested by the flock supervisor are conducted
17 or completed?

03:48PM

18 A The flock supervisor would follow up.

19 Q And if the corrective actions are not taken,
20 does Cargill withhold birds?

03:48PM

21 A Well, sir, I don't know -- I don't know
22 what -- if they have compost sitting outside
23 uncovered, then, yes, we could withhold birds, but
24 if it's weeds or trash or just a leg sticking up out
25 of the composter that's not covered, properly

03:48PM

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1 covered with a carbon source, then, no, we wouldn't
2 withhold birds.

3 Q Let me reask it this way: If a grower was
4 told to take corrective actions but failed to do so,
5 would birds be withheld by Cargill? 03:49PM

6 A Again, it depends on what the corrective
7 action was.

8 Q So you're saying some actions would require
9 it, some would not in whether Cargill would withhold
10 birds? 03:49PM

11 A Yes, sir.

12 Q Is a grower told that as part of the
13 corrective action, if they don't take the actions
14 that are requested by the flock supervisor, birds
15 would be withheld? 03:49PM

16 A If an incident has been found and if a grower
17 refuses to correct it and there's a follow-up
18 meeting with me, the production manager, to see why
19 it hasn't been done or what the plan, corrective
20 action plan is, at that time if it is deemed serious 03:50PM
21 enough, yes, sir, the grower would be informed that
22 placements could be withheld.

23 Q Okay. So my point, though, is this: There
24 may be some types of incidents that you would not
25 advise the grower that failure to take the 03:50PM

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1 corrective actions, birds would be withheld; is that
2 a fair statement?

3 MR. TUCKER: Could you restate that?

4 MR. GARREN: I'll have her read it back.

5 (Whereupon, the court reporter read 03:50PM
6 back the previous question.)

7 MR. TUCKER: There's an awful lot of
8 negatives in there.

9 A Sir --

10 Q Let me restate it. Let me just restate it. 03:50PM

11 If a grower failed to take corrective action and he
12 was advised as part of taking the corrective action
13 that birds would be withheld, would birds be
14 withheld if he failed to take the corrective action,
15 yes or no, dealing with a composter? 03:51PM

16 A Yes, sir.

17 Q Okay. Do you have any knowledge whether or
18 not that has in fact occurred, birds being withheld
19 because a grower failed to take corrective actions
20 in dealing with a composter? 03:51PM

21 A No, sir. To my knowledge all -- if there has
22 been something found, it has been corrected.

23 Q Okay. Are there types of corrective actions
24 that you don't deem serious enough that a grower
25 would not need to be told if you don't make these 03:51PM

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1 corrective actions we're going to withhold birds?

2 A Yes, sir.

3 Q Okay. Let's look at Exhibit 21 now. This is
4 an E-mail to you from Mr. Maupin on January 5, 2004
5 and the subject of it is December 2003 ag 03:52PM
6 environmental update; do you see that?

7 A Yes, sir.

8 Q The next page, which is Bates number 121750,
9 is titled December 2003 ag environmental update. Do
10 you know who prepares this form? 03:52PM

11 A I would have prepared this.

12 Q And do you do this in the normal course of
13 your business activities for Cargill or Cargill,
14 Inc.?

15 A No, sir. This was -- during this time frame 03:52PM
16 Mr. Maupin was kind of wanting some updates, and
17 this was the form that I was giving him those
18 updates in.

19 Q All right. The first bullet point on this
20 particular page says, the Precision Ag model in 03:52PM
21 Kansas is still moving forward. That's the process
22 that we -- the program we talked about earlier today
23 where litter is moved from northwest Arkansas to
24 Kansas; correct?

25 A Yes, sir. 03:53PM

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1 Q And so that I'm clear, the source of that
2 litter would be what, Cargill farms only or a
3 combination of Cargill and non-Cargill farms?

4 A It would be Cargill contract farms with one
5 exception. We did move two or three houses from a
6 Simmons chicken house, chicken farm in -- north of
7 Southwest City, Missouri. We needed the litter.
8 They said it was okay. So we did take that and move
9 that to Kansas, but 95 percent of the litter would
10 be from Cargill contract producers.

03:53PM

03:54PM

11 Q All right. Did you provide the contents of
12 this document on Page 121750 when you prepared it?

13 MR. TUCKER: Could you restate that?

14 MR. GARREN: It's probably not a good
15 question.

03:54PM

16 Q Did you have personal knowledge of all of the
17 items that are reported on this page that we see at
18 121750?

19 A Yes, sir. I would have created this document.

20 Q Okay. I understand you might have created it,
21 but did you have personal knowledge of the items
22 that are reported on this document in order to
23 create it or did you rely on third parties?

03:54PM

24 A Some of the information may have come from
25 other people.

03:54PM

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1 Q Did Mr. Maupin explain to you why he wanted
2 this ag environmental update provided to him?

3 A I believe he was compiling monthly reports,
4 monthly activity reports.

5 Q Is it your recollection that you did monthly 03:55PM
6 reports for the year 2003 for him?

7 A I don't know the exact date, but there was a
8 period of time that we did do this report.

9 Q Look at the next page. Well, let me see. I
10 have some questions here I think. Did he give you 03:55PM
11 any parameters for reporting to him what he would
12 want to see on this report?

13 A I do not recall any, no, sir.

14 Q How did you know what to report to him with
15 regard to an ag environmental update? 03:56PM

16 A My own judgment, using my own judgment.

17 Q So you may determine what was an environmental
18 matter to report by way of an update; is that
19 correct?

20 A Yes, sir. 03:56PM

21 Q And at this time frame were you the one
22 personally familiar with those items that would fall
23 in the category of environmental update?

24 A Not necessarily, no, sir.

25 Q Can you point to me on this document what item 03:56PM

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1 you had to rely on a third party in order to report
2 it to Mr. Maupin in this report?

3 A On 752?

4 Q 750.

5 A 750? Bullet point number one, I would have 03:56PM

6 partial knowledge. Devin Helming, who is helping me

7 with Precision Ag model, would have had part of that

8 knowledge. The agreement on the phosphorus index

9 was not reached in December. I would have had to

10 rely on legal counsel. The annual report for 03:57PM

11 Virginia house bill, I would have had to rely on

12 somebody in Virginia. I don't remember who that

13 would be. It may have been the Virginia Poultry

14 Federation at that time. And the Oklahoma-Arkansas

15 agreement over the .0375, I would have had relied on 03:58PM

16 some state officials for that because I wasn't

17 personally involved in any of that.

18 Q Did you recall talking to state officials on

19 that issue or did you just get literature that had

20 been produced? 03:58PM

21 A I don't recall specific conversations, but I

22 had to have talked to them to have gotten that

23 information.

24 Q Okay. Under the month of January, which

25 bullet points did you have to rely on somebody? 03:58PM

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1 A Well, Dr. Goodwin would have had to have given
2 me that information. I would have been involved in
3 the Precision Ag, the details, me and Devin Helming
4 would have been, and the coordinator positions would
5 have been told to me by the other complex locations. 03:59PM

6 Q Okay. That last bullet point that says the ag
7 environmental coordinator position, what is that
8 position; what does it do?

9 A That is -- it's really not a position. It's
10 more of a responsibility, but if something is going 03:59PM
11 on -- it's a way for activities or anything new in
12 other states to be communicated back to either
13 myself or -- well, to basically Tim Maupin. If
14 somebody has a new piece of equipment, there's new
15 monies for -- state monies for compost -- it's a 03:59PM
16 myriad of -- I mean, it covers a lot of area, but
17 like if Texas has 5 million dollars for compost
18 buildings for our contract growers, we may have
19 found out about it and, well, what can we do in
20 Oklahoma, Arkansas, Missouri and Virginia, what 04:00PM
21 happened in Texas, things like that.

22 Q Who is the ag environmental coordinator for
23 Springdale?

24 A That would be me.

25 Q Who is ag environmental coordinator for Texas? 04:00PM

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1 A Keith Wingert.

2 Q Who is ag environmental coordinator for
3 Virginia?

4 A I don't know. The gentleman that did have it
5 is not there anymore. 04:00PM

6 Q Do you remember his name?

7 A No, sir, I don't remember his name right now.

8 Q Is there an ag environmental coordinator for
9 Missouri?

10 A That would have been -- that would be Roy 04:01PM
11 Bernard.

12 MR. GARREN: I think we need to take a
13 break for another tape change.

14 VIDEOGRAPHER: We are now off the Record.
15 The time is now 4:00 p.m. 04:01PM

16 (Following a short recess at 4:01 p.m.,
17 proceedings continued on the Record at 4:17 p.m.)

18 VIDEOGRAPHER: We are now back on the
19 Record. The time is now 4:16 p.m.

20 Q Mr. Alsup, looking again at the same exhibit, 04:17PM
21 21, the same page, 121750, your December 20, 2003 ag
22 environmental update, did you conduct meetings to
23 gather people to assist you in getting information
24 that you had to rely on from others to make this
25 report? 04:17PM

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1 A I do not recall any meetings. It was probably
2 phone calls.

3 Q Did I hear you say then that you got
4 information from people in Virginia and Texas in
5 order to prepare this environmental update; correct? 04:17PM

6 A Well, yes, sir. Some of the bullet points on
7 here would have had to have come from other
8 locations.

9 Q Okay. Based on that, do the ag environmental
10 coordinators work together to share information in 04:18PM
11 their part of the country to assist you in your part
12 of the country or vice versa?

13 A We have done that in the past, yes, sir.

14 Q How long has this ag environmental coordinator
15 position been around? 04:18PM

16 A Three or four years.

17 Q Okay. Are you familiar with the Harmony
18 Shenandoah Valley operation?

19 A The Harmony was a fertilizer project in
20 Virginia. 04:18PM

21 Q You're familiar with it then?

22 A I know about it. I don't know the intimate
23 working details of it.

24 Q Is it still operating to your knowledge?

25 A No, sir, it is not. 04:19PM

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1 Q Are you familiar with a project called
2 litter-fired heater for use in turkey barns?

3 A There is a current project going on sponsored
4 by the university or the State of Missouri looking
5 at using litter-fired heaters for a heat source for 04:19PM
6 poultry barns, yes, sir.

7 Q Is Cargill participating in that study or
8 experiment?

9 A Cargill has -- I don't know what participating
10 means, but Cargill has donated some money to get 04:19PM
11 that experiment running, and one of our contract
12 producers has one of the litter-fired heaters on his
13 facility.

14 Q And that's a facility in Missouri?

15 A Yes, sir. 04:20PM

16 Q Okay. None of those facilities are in the
17 IRW, that type of facility with that heater?

18 A To my knowledge, there's not a litter-fired
19 heater on a contract farm, no, sir, in the IRW.

20 Q Are you familiar with a FiberWatt project that 04:20PM
21 Cargill was interested in or participating in?

22 A Yes, sir, I am.

23 Q Tell the court what that is.

24 A FiberWatt is a company from England. They
25 use -- they're an electrical generator. They use 04:20PM

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1 poultry litter as a fuel source. I believe they
2 have three or four of these electrical generation
3 systems in England. They have built one in
4 Minnesota; I also believe it is now running, and I
5 think they are planning on building their next one
6 on the East Coast.

04:21PM

7 Q Do you know of any plans to build one in the
8 Arkansas area?

9 A I had not talked to anybody from FiberWatt.
10 They have looked at it. I don't know what their
11 plans are, their timing is. I know right now
12 they're on the East Coast, I think, planning the
13 next one. I do not know if they're planning on --
14 when or if they're planning on putting one in this
15 area.

04:21PM

04:21PM

16 Q Look at 121751 of this document. It's another
17 E-mail that's dated May 10th from you to Mr. Maupin
18 with an ag environmental update, and the next page
19 has April and May 2004 environmental update. Did
20 you prepare this document as you did the other one?

04:22PM

21 A Yes, sir, I would have.

22 Q Would this document have been prepared
23 similarly to how you prepared the other one, that
24 is, you would have perhaps relied on some people
25 other than just your personal knowledge?

04:22PM

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1 A Yes, sir.

2 Q Let's go to the next page, 753. It's an
3 E-mail from you to Mr. Maupin and others on August
4 31, 2005. The subject, which says before any litter
5 is moved from a contract producer's farm and litter
6 sample is taken to the University of Arkansas for
7 analysis; do you see that?

04:22PM

8 A Yes, sir.

9 Q Did you prepare that E-mail?

10 A Yes, sir.

04:22PM

11 Q And did you, in fact, send it to Mr. Maupin?

12 A Yes, sir.

13 Q The next document that follows behind that in
14 Bates number order, is that a document you prepared?

15 A Yes, sir.

04:22PM

16 Q Why did you prepare it?

17 A When we -- Precision Ag, when we were moving
18 litter, selling litter in the Precision Ag model
19 into Kansas, we had to give the customers -- the
20 folks that were buying the litter, we had to let
21 them know nutrient content in the litter that was
22 delivered.

04:23PM

23 Q Okay. Look at this document, sir. Why did
24 you produce it?

25 MR. TUCKER: You're assuming he's the one

04:23PM

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1 that produced it. You talking about for the lawsuit
2 or --

3 Q Let me ask it this way: You created this
4 document you said. Why did you create it?

5 A Let me -- 04:23PM

6 MR. TUCKER: Sorry.

7 A It would have been a recount of where we were
8 at with Precision Ag. I don't -- I don't know where
9 this came from. It could have been for a recap for
10 Tim Maupin, but I don't know that. 04:24PM

11 Q Let's go to the next pages, 755, another
12 E-mail from you to Maupin dated May 29, 2003, and
13 the attachment says environmental survey division
14 dot XLS. Do you see that?

15 A Yes, sir, yes, sir. 04:24PM

16 Q Did you create that E-mail?

17 A Yes, sir.

18 Q Do you know what environmental survey division
19 dot XLS is?

20 A It would have been a spreadsheet of some type. 04:24PM

21 Q Is it one that you prepared?

22 A Yes, sir.

23 Q Do you know what it would have said because
24 I'm not able to find it or I don't know how to
25 identify it. 04:25PM

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1 A That the only survey recap would have been in
2 an earlier document where did they have a nutrient
3 management plan, the county, do they have -- what
4 type of dead bird disposal.

5 Q Exhibit 20? 04:25PM

6 A Oh, yeah. I believe that would be it, yes,
7 sir. To the best of my knowledge, that would be it.

8 Q All right, and would you have sent that to Mr.
9 Maupin at his request?

10 A Yes. 04:25PM

11 Q Looking at the next page, 756, another E-mail
12 from this time you to Mr. Charlie Delap on July 22,
13 2003, and the attachment there says turkey
14 environmental audit form, and it says, and I'll read
15 it, I will need to visit all the breeder facilities 04:26PM
16 in mid August to complete an environmental audit for
17 each facility, in an E-mail to Mr. Delap. Did you
18 in fact make such a visit to the breeder facilities?

19 A Sir, what number are you on?

20 Q 756. These should be in numerical order, sir. 04:26PM

21 A I do not have 756.

22 MR. WALKER: Neither do I.

23 Q Do you have a 757?

24 A No, sir.

25 MR. WALKER: There's a 55. 04:27PM

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1 MR. TUCKER: Feel free to look.

2 MR. GARREN: I don't dispute you don't have
3 it. I'm asking if that's it.

4 Q I apologize. Why don't you look at this 56
5 and I believe the next page is -- 04:27PM

6 MR. WALKER: Can you say on the Record what
7 it is you just handed him?

8 MR. GARREN: I'm going to in just a second.

9 Q We're talking about 121756 through 757. All
10 right. I've handed you what is the E-mail I 04:27PM
11 referred to earlier. It's the Tim Alsup E-mail to
12 Charlie Delap dated July 22, 2003; do you see that?

13 A Yes, sir.

14 Q And that's an E-mail that you sent to Mr.
15 Delap? 04:27PM

16 A Yes, sir.

17 Q Okay, and the subject of that E-mail is about
18 you visiting the breeder farms?

19 A Yes, sir.

20 Q What was the purpose of your visiting breeder
21 facilities in August according to this E-mail? 04:27PM

22 A To do an audit.

23 Q And that's an environmental audit?

24 A Yes, sir.

25 Q Did you in fact make that trip and make those 04:28PM

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1 audits?

2 A Yes, sir, I believe I did.

3 Q Did you do it for all breeder facilities?

4 A In the Ozark-Springdale operations, yes, sir.

5 Q Okay, and did you fill out audit forms similar 04:28PM
6 to the form that's attached to this that's at Page
7 757?

8 A It would have been this audit. It would have
9 been an audit form like that. It may have had
10 breeder farm on it. 04:28PM

11 Q That one says contract farm, doesn't it?

12 A Yes, sir, but there may have been another one
13 a little different that had breeder farm on it.

14 Q And is this the one and only audit performed
15 on the breeder farms or were there others performed 04:28PM
16 besides the one that's referenced in this E-mail?

17 A That I personally did?

18 Q That you personally did.

19 A I have done one.

20 Q Do you know whether or not others in Cargill 04:29PM
21 entities have performed environmental audits on the
22 breeder farms?

23 A The breeder personnel should have been doing
24 audit forms or I mean filling out audits as well.

25 Q When they would fill out the audit form, where 04:29PM

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1 does it go?

2 A It would reside in the breeder manager's
3 office.

4 Q So it would not be reported back to you as
5 environmental coordinator?

04:29PM

6 A No, sir.

7 Q Would it be reported back to anybody outside
8 of the breeder manager's office?

9 A What are you talking about being reported
10 back?

04:29PM

11 Q The results of the audit form.

12 A If there was an issue found, then, yes, I
13 would expect that it would be reported back to the
14 breeder manager's supervisor or to me.

15 Q Okay. Let's -- I'm going to leave this here
16 so we can get it into the exhibit. Do you have the
17 next page in that exhibit as 122105?

04:30PM

18 A Yes, sir.

19 Q Is that an E-mail from you to Mr. Maupin
20 September 5, 2003?

04:30PM

21 A Yes, sir.

22 Q That says breeder farm environmental audit
23 recap doc; do you see that?

24 A Yes, sir.

25 Q Going to the next page, is that in fact the

04:30PM

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1 doc that's referenced in that E-mail?

2 A Yes, sir.

3 Q Is that a document you prepared?

4 A Yes, sir.

5 Q Is the information that's stated on there 04:30PM

6 correct as far as you know when you reported it?

7 A Yes, sir.

8 Q Let's look at the next page of this document.

9 Do you have what looks like a spreadsheet that's got

10 a label Bates number 159403? 04:31PM

11 A Yes, sir.

12 Q Who prepared that document?

13 A I do not know.

14 Q Are you familiar with what's referred to on

15 the title of that document, ag environmental action 04:31PM

16 list, 2004?

17 A I have heard of the action list, yes.

18 Q Okay. Where have you heard of the action

19 list?

20 A There is a production meeting that is attended 04:31PM

21 by production managers, that they discuss issues or

22 what's currently going on, and if there's something

23 that needs further attention, they will put that

24 down as an action item, on the action item list.

25 Q Who retains the list then? 04:32PM

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1 A I don't know.

2 Q Is it circulated to all of those who meet
3 together that you just discussed?

4 A I don't know.

5 Q Okay. It appears on this that it has an 04:32PM
6 action item and then there's a list of about fifteen
7 items; do you see that?

8 A Yes, sir.

9 Q The next column says initial. Your initials
10 would be TA, would they not? 04:32PM

11 A Yes, sir.

12 Q And TM would probably be Tim Maupin?

13 A Yes, sir.

14 Q And it has a target date, and it has a date
15 under that column; do you see that? 04:32PM

16 A Yes, sir.

17 Q And then the next item is a completion date.
18 Is this -- then it has comments as the last column
19 out at the end. This particular page we're looking
20 at shows it's updated on March 25th, 2004. If 04:32PM
21 somebody -- does this appear to be a task
22 assignment?

23 A It has -- of the fifteen things listed, there
24 are people that are assigned to it if that's what
25 you meant. 04:33PM

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1 Q So when these people have this meeting that
2 you talked about and this action list is created,
3 they're assigned tasks in the meeting; is that the
4 purpose?

5 A If it is deemed that there needs to be further 04:33PM
6 action, yes, sir.

7 Q Okay. Let's look at Item No. 2 on this. It
8 reads, give me or give feedback to the growers on
9 the engagement survey they completed, and the
10 initial is TA, and then under that is ag managers. 04:33PM
11 Do you see that?

12 A Yes, sir.

13 Q And it's dated 5-1-04 but no completion date?

14 A Yes, sir.

15 Q Tell the court what the engagement survey is 04:33PM
16 that the growers completed.

17 A I created a survey for our contract producers
18 that they fill out, and it ranges from -- it's more
19 or less a satisfaction survey, what's good, what's
20 not so good, what improvements they'd like to see, 04:34PM
21 what do they not want to see. It has a bunch of
22 questions on it about different areas of our
23 business and a comment section that they can fill
24 out if they want to do further comment.

25 Q How many of those surveys are circulated or 04:34PM

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1 have been circulated to your knowledge?

2 A I believe we have done three.

3 Q And who has possession of those surveys, if
4 you know?

5 A The actual surveys, we've just completed one, 04:35PM
6 and I have the actual surveys in my office.

7 Q Were they produced in this case?

8 A It was just done two weeks ago, so I doubt it.

9 Q Okay. Back up a little bit. I thought I
10 heard you say there's been three. 04:35PM

11 A Yes, sir. We did one -- about every two, two
12 and a half years we do one.

13 Q Okay. Do you know whether or not those
14 surveys have been produced in this case?

15 A No, sir, I don't know. 04:35PM

16 Q Do the surveys have any areas of business or
17 subjects dealing with environmental matters in the
18 production of poultry?

19 A Such as what?

20 Q Do you have any questions with regard to the 04:36PM
21 handling and disposal of poultry waste generated at
22 the contract growers' facilities?

23 A Sir, the survey is more on Cargill and
24 practices, paperwork, what they see in Cargill. It
25 doesn't focus -- the survey does not focus on what's 04:36PM

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1 going on at a contractor's facility. It is just
2 getting feedback from a contract producer on how
3 they perceive Cargill.

4 Q And do any of those questions relate to
5 Cargill's work as an environmental steward?

04:36PM

6 A There is one section that has veterinary
7 services. I can't remember how it's worded,
8 technical services, and I don't know the exact
9 questions, but there are some questions dealing with
10 technical services, and that would be -- there may
11 be some questions on has Cargill -- have you met a
12 Cargill personnel that has dealing with
13 environmental -- I mean have you received
14 information. I don't know the exact questions but
15 there may be.

04:37PM

04:37PM

16 Q How long is the survey in pages or questions?

17 A Eight pages.

18 Q Item 9 on this exhibit says, attend Cargill
19 live animal environmental summit, TM, TA, 4-2-04; do
20 you see that?

04:38PM

21 A Yes, sir.

22 Q Tell me what the Cargill live animal
23 environmental summit is.

24 A Sir, I believe that was a meeting that was
25 held in Wichita where some folks from our pork

04:38PM

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1 division and our beef division met in Wichita.

2 Q Was there any poultry division there?

3 A Yes. I attended and I believe Tim Maupin
4 attended.

5 Q Okay. What was the purpose of the meeting? 04:38PM

6 A A general swapping of ideas, of bringing up
7 issues that are facing each industry.

8 Q I'm sorry, I didn't understand what you said.
9 Facing what?

10 A Issues that each of the different pork 04:39PM
11 division, the beef division, poultry division may be
12 facing with upcoming legislations. I believe the
13 CAFO -- a big part of it was -- I think the CAFO
14 changes that were coming up was a big part of it. I
15 don't remember the exact agenda for it, but it would 04:39PM
16 have been items like that.

17 Q How long did the meeting last?

18 A I don't know.

19 Q Did you attend all of it?

20 A Yes. Yes, sir, I believe I did. 04:39PM

21 Q Was it more than a day?

22 A Sir, I believe it was a day. I believe it was
23 a day long.

24 Q Has there been any more meetings similar to
25 that conducted other than the one that's referenced 04:39PM

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1 in 2004?

2 A I do not know.

3 Q You haven't attended any then; correct?

4 A No, sir.

5 Q The last item on here says, Item 15, run ESS 04:40PM
6 test at Springdale on litter -- TA, that's your
7 initial -- on 4-6-04. Is ESS -- does that stand for
8 environmental stress screening?

9 A No, sir. There was -- I forgot the name of
10 the product. There was a gentleman that had a 04:40PM
11 product that was a litter amendment, and he was
12 wanting to use it and to run tests on it, and we
13 talked to one of our contract producers who was
14 supposed to make birds perform better, and I believe
15 that's what that project is. 04:41PM

16 Q All right. You believe. Are you certain?

17 A I am not definitely certain, no, sir.

18 Q Okay, and what was the purpose of the
19 amendment; when you say birds perform better, what
20 was the criteria that you were measuring that 04:41PM
21 performance with?

22 A Improved feed conversions, improved weights,
23 better livability.

24 Q The next page of this document is 159403.

25 This is another ag environmental action list dated 04:41PM

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1 2004 but appears to be for a different time frame.
2 Do you know how many of these things were prepared
3 or used or over what period of time an action list
4 existed?

5 A No, sir. 04:42PM

6 Q The last page of this exhibit, 160906, this is
7 an April 2004 environmental update. Is this a
8 document you would have prepared?

9 A Yes, sir.

10 Q Okay. Turn back to 122106 in this same 04:42PM
11 exhibit. That's the document attached to your
12 September 5, 2003 E-mail to Mr. Maupin?

13 A Yes.

14 Q Last paragraph, in the middle of that
15 paragraph it says, that Greg Hurt currently uses a 04:43PM
16 burn pit to dispose of his mortality. I do not know
17 if this is legal in Oklahoma. Did you write that?

18 A Yes, sir.

19 Q And what did you do to determine if Mr. Hurt's
20 actions were legal or not in Oklahoma? 04:43PM

21 A I asked Greg Hurt to contact his -- the
22 inspector that would have been assigned to his farm
23 that worked for the State of Oklahoma to determine
24 if that was legal.

25 Q And did Mr. Hurt report back to you 04:44PM

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1 personally?

2 A I don't remember if he did or not.

3 Q Who followed up to know whether or not Greg
4 Hurt found out what his actions were as it relates
5 to this burn pit? 04:44PM

6 A It could have been me, could have been the
7 flock supervisor, the breeder flock supervisor.

8 Q Sitting here today, do you have a recollection
9 of whether or not it was determined his actions were
10 legal or not? 04:44PM

11 A I do not know definitely.

12 Q Is that something Cargill would be concerned
13 about with regard to its contract growers, whether
14 they're performing something legally or illegally?

15 A Well, sir, if it was deemed illegal, our -- 04:44PM
16 and the inspector would have told us that, then,
17 yes, yes.

18 Q What procedure did you set up to make sure
19 that you were properly informed as to whether it was
20 legal or illegal? 04:45PM

21 A Well, I don't have to set up a procedure. The
22 State of Oklahoma has procedures.

23 Q No. I'm talking about you, working for
24 Cargill, having concern about whether your contract
25 grower is acting illegally. What procedure did you 04:45PM

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1 put in place to assure yourself his actions were in
2 fact proper or legal?

3 A The procedure was for Greg Hurt to contact his
4 inspector to see if that practice was okay or not.

5 Q And how would you know that? 04:45PM

6 A If it was not, I would have got communication
7 from the State of Oklahoma.

8 Q Okay, and is that the process that the State
9 of Oklahoma uses, they notify you?

10 A Yes, sir. 04:45PM

11 Q And how do they know that, to notify you?

12 A They would have notified Cargill, yes, sir.
13 How do they know it? I don't know. That was their
14 procedure.

15 Q Okay. How do you know Hurt would have 04:45PM
16 contacted the State of Oklahoma?

17 A We would have asked him, but I don't know. I
18 don't know the exact way that we followed up on
19 that.

20 Q Let me hand you what's been marked as Exhibit 04:46PM
21 18 and ask you if you've seen that document and can
22 tell us what it is.

23 A Okay.

24 Q Did you prepare this document in July 19,
25 2001? 04:47PM

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1 A Yes, I did.

2 Q Who is Mike Wheaton?

3 A He was a contract producer for us.

4 Q And did he produce in the state of Arkansas or

5 Oklahoma? 04:47PM

6 A The state of Arkansas.

7 Q And was his location, his facility located
8 within the IRW?

9 A Yes, sir, I believe so.

10 Q And Gerald Duncan at that time, what was his 04:47PM
11 title or position?

12 A Production manager.

13 Q All right, and did you and he actually make a
14 visit to this farm as stated in this memo?

15 A Yes, sir. 04:47PM

16 Q And who prepared the list of items that we see
17 there under the three headings, brood house,
18 intermediate and grow-out house, and actually four,
19 grow houses?

20 A I would have. 04:48PM

21 Q All right, and did you make those personal
22 observations yourself?

23 A Gerald Duncan and I would have made those
24 observations, yes, sir.

25 Q In two of those, under the brood house is a 04:48PM

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1 litter pile stacked behind the house; do you see
2 that?

3 A Yes, sir.

4 Q Do you have a follow-up report to know whether
5 those were removed as you requested in this memo? 04:48PM

6 A I do not know if there's a follow-up report.

7 Q Do you know whether or not those litter piles
8 that are referenced in this memo were in fact
9 removed properly?

10 A Sir, I know this farm was -- the contract was 04:48PM
11 not renewed.

12 Q When was it not renewed?

13 A I don't have the date. I know that he is no
14 longer a contract producer for us.

15 Q And what was the reason for his no longer 04:48PM
16 being a contract producer?

17 A The issue stated in the -- in this letter and
18 performance.

19 Q Okay. So when you say performance, you had
20 problems with the way he was raising his birds in an 04:49PM
21 economical fashion?

22 A What do you mean by economical?

23 Q Well, isn't economics one of the criteria that
24 you use for rating the performance of growers?

25 A Flock settlements with prime costs are -- are 04:49PM

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1 how we rate how a flock is done, yes, sir.

2 Q Well, prime cost has to do what it cost to
3 grow a bird to a certain weight, isn't it?

4 A Yes, sir.

5 Q All right. So that means there's economics 04:49PM
6 involved with regard to that cost, the amount of
7 feed, medications, that sort of thing that are
8 important to Cargill's bottom line; correct?

9 A Yes, sir.

10 Q And based on this list here, there's a lot 04:50PM
11 more to do with how he was raising the birds than
12 just these litter piles; would you agree?

13 MR. TUCKER: Object to the form of the
14 question.

15 A I don't understand. What do you mean by the 04:50PM
16 question?

17 Q Well, let's go through it. Under brood house
18 there are three issues that you had there; correct?

19 A Uh-huh.

20 Q Only one of them dealt with the litter pile 04:50PM
21 being stacked outside; correct?

22 A There's one note, yes, No. 3.

23 Q Okay. In the intermediate house we see
24 nothing with regard to environmental issues having
25 to do with litter; correct? 04:50PM

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1 A Yes, sir.

2 Q But there's five items listed there; correct?

3 A Yes, sir.

4 Q And under Grow-Out House No. 1 there's seven

5 issues, and only one of those deals with a litter 04:50PM

6 pile being stacked outside; correct?

7 A Yes, sir.

8 Q All right, and then the other one, the last

9 category, there is nothing there. It just says no

10 birds in house. 04:51PM

11 A Uh-huh.

12 Q Were there supposed to be birds in house or is

13 that just saying it's a non-issue?

14 A I don't exactly know why. He could have had

15 all the birds in Grow-Out House 1 and hadn't split 04:51PM

16 them up between the two houses. I do not know why

17 that comment is there.

18 Q All right. Do you know how long after this

19 memo in 2001 Mr. Wheaton discontinued his growing

20 for Cargill? 04:51PM

21 A No, sir.

22 Q What records would you have to find to tell us

23 that?

24 A I -- maybe a contract file may show that. I

25 don't know. 04:52PM

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1 Q When a grower is terminated by Cargill, are
2 they given a written termination notice?

3 MR. TUCKER: Object to the form of the
4 question. I believe he testified his contract was
5 not renewed. 04:52PM

6 Q When they're informed they're no longer
7 getting birds from Cargill, is that done in writing
8 or verbally?

9 A I believe it is done both ways.

10 Q And would you be the person in this instance 04:52PM
11 in making that written notification or would it have
12 been Mr. Duncan or someone else?

13 A It could have been either one of us.

14 Q Do you know if Mr. Wheaton is growing for any
15 other grower or integrator? 04:52PM

16 A I do not know, sir.

17 Q Let me hand you what's been marked as Exhibit
18 23 and ask you if you've seen that document before.
19 This appears to be an E-mail from you to Mr. Maupin
20 on November 8, 2002, does it not? 04:53PM

21 A Yes, sir.

22 Q And it deals with a nutrient management plan
23 letter revised document; correct?

24 A Yes, sir.

25 Q Is that document the next page of this exhibit 04:53PM

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1 at Bates number 122130?

2 A Yes, sir.

3 Q Do you know whether that letter was in fact
4 sent out to the growers?

5 A I believe it was.

04:54PM

6 Q All right, and was it sent out in the year
7 2002?

8 A I do not know the date that it was sent out.

9 Q Who would know?

10 A I don't know.

04:54PM

11 Q Who signed the letter, if you know?

12 A I do not know that either.

13 Q In 2002 when you prepared this document, did
14 you know whether or not there were -- let me back

15 up. In 2002 was this document prepared for sending
16 to all contract growers in Arkansas and Oklahoma?

04:55PM

17 A I would have -- I would believe this document
18 would have been to every contract grower, no matter
19 what location.

20 Q Okay, and would that include Virginia,
21 Missouri and Texas, too?

04:55PM

22 A Yes, sir.

23 Q Okay. Did you know at that time in 2002
24 whether or not there was a backlog in obtaining

25 written nutrient management plans in the state of

04:55PM

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1 Arkansas?

2 A I don't know the exact date. I have known
3 that there has been a backlog in Arkansas. I can't
4 tell you when that started or even if that has
5 stopped.

04:56PM

6 Q Well, isn't it a fact that nutrient management
7 plans were not required in Arkansas, that is
8 required, until 2006?

9 A 2006, 2007, somewhere in there, yes.

10 Q Okay. So based on this letter, again, this is
11 Cargill informing its growers that a government
12 entity is creating a rule and it's only then that
13 Cargill requests their growers to plan for abiding
14 by that rule; correct?

04:56PM

15 A What this is saying is that the federal
16 government is in process of changing their CAFO
17 regulations and that because of that, Cargill is
18 putting into the contract a requirement to get a
19 nutrient management plan.

04:56PM

20 Q Okay, and that's because the federal
21 government was requiring nutrient management plans
22 to be put in place by the date January 1, 2004; is
23 that correct?

04:57PM

24 A Well, no, sir. I don't know if that -- if the
25 dates coincide. I don't know when the CAFO rules --

04:57PM

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1 what dates they had set to do that, but Cargill
2 picked January 1st, 2004 for that.

3 Q Okay. Let me hand you Exhibit No. 24 and ask
4 you if you recall your E-mail to Mr. Maupin on
5 January 13, 2003 involving an ag meeting in
6 Springdale on December 3, 2002, a PowerPoint?

04:57PM

7 A Okay.

8 Q Did you prepare this attachment to the E-mail
9 that's entitled ag environmental update January 13,
10 2003?

04:59PM

11 A I would have had a hand in preparing some of
12 it.

13 Q Who would have helped you prepare it?

14 A Tim Maupin.

15 Q Anyone else?

04:59PM

16 A No, sir.

17 Q What was the purpose of doing this
18 presentation? Let me ask you this: Was this a
19 slide presentation we're looking at as part of this
20 Exhibit No. 24?

05:00PM

21 A It is a PowerPoint presentation.

22 Q And what was the purpose for preparing the
23 environmental update PowerPoint?

24 A Periodically the production managers have a
25 meeting, and it appears that we were going to give

05:00PM

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1 an update at that ag meeting that was scheduled.

2 Q Did you make any presentations at that
3 meeting?

4 A Sir, I don't know if I made this presentation
5 or if Tim Maupin made this presentation. 05:00PM

6 Q Look at Page 122113 where it says new
7 initiatives. The very first bullet point says, EBMP
8 manual will roll out at grower meeting. Does that
9 refer to the environmental best management practices
10 manual? 05:01PM

11 A I believe so, yes, sir.

12 Q And so it would have been some meetings after
13 January of 2003 that the growers would have received
14 their first environmental best management practices
15 manual? 05:01PM

16 A Yes, sir.

17 MR. TUCKER: Object to the form of the
18 question.

19 Q Okay. Are you familiar with the history of
20 how the environmental best management practices
21 manual was prepared? 05:01PM

22 A I believe Tim Maupin prepared that.

23 Q Do you know how he got the information to
24 prepare it?

25 A No, sir, I do not. 05:01PM

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1 Q Did -- I'm trying to look here at Page 109 and
2 110, contract changes. Were the contracts for
3 Cargill changed as this indicates was going to
4 occur?

5 A Yes, sir. Cargill's contract does have a 05:02PM
6 requirement for a nutrient management plan for
7 growers.

8 Q And that change did not occur until sometime
9 after this ag meeting in January of '03; correct?

10 A Yes, sir. 05:02PM

11 Q Okay, and were the growers -- were they
12 allowed to negotiate any of the terms of that change
13 of the contract; do you know?

14 A I do not know.

15 Q Okay. Did anybody ask the growers whether or 05:02PM
16 not they wanted that included in their contracts?

17 A I do not know.

18 Q Do you know whether or not Cargill had an
19 environmental best management practice manual before
20 this one was rolled out after January of 2003? 05:03PM

21 A A manual? I do not believe there was a
22 manual.

23 Q Look at 122124 and at the top it says Sackett.
24 Can you tell me what that means? Last digits are
25 124. 05:04PM

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1 A Okay, 124.

2 Q Do you know what Sackett refers to?

3 A I think it was a fertilizer plant that was
4 wanting to get started up or maybe even had -- maybe
5 they did start up that were, I believe, wanting to
6 use poultry litter.

05:04PM

7 Q About the fourth bullet point down it says,
8 Cargill Crop Nutrition distribution chain. What
9 does that refer to?

10 A I do not know -- I don't know.

05:04PM

11 Q Do you know whether or not Sackett was
12 provided any poultry waste from Cargill growers?

13 A I do not know.

14 Q Look down at 126. This talks about Precision
15 land application. Is that the same project we
16 talked about moving poultry waste from northwest
17 Arkansas to Kansas?

05:05PM

18 A Yes, sir.

19 Q And it says in the third bullet point, 10,000
20 tons of litter per year land applied to farms within
21 250 miles of Springdale. Who obtained that fact or
22 that bullet point information?

05:05PM

23 A It may have been Devin Helming using that as a
24 goal when we were talking about starting up the
25 Precision Ag model.

05:05PM

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1 Q When you say a goal, doesn't this imply then
2 that there's 10,000 tons being spread in the
3 Springdale area, and that goal would be to try and
4 acquire that for purposes of your Precision Ag
5 model? 05:06PM

6 A Sir, that -- to me that means that the goal
7 of, and I don't know what time frame that is, that
8 Precision Ag had a goal to sell 10,000 tons of
9 litter.

10 Q Okay. You really don't know, though, do you? 05:06PM

11 A No, sir.

12 Q Okay. That's fine. Do you know whether
13 Cargill Crop Nutrition -- did it perform any soil
14 tests in conjunction with the Precision Ag model
15 that was being put into place? 05:06PM

16 A I do not know.

17 Q Did you have any meetings or contact with
18 anybody in the Cargill Crop Nutrition division of
19 Cargill in relation to the Precision Ag model?

20 A Devin Helming would have been -- I believe 05:07PM
21 worked for Cargill Crop Nutrition.

22 Q Okay. He didn't work for Turkey Production,
23 LLC, or Cargill, Inc.; he worked in that division?

24 A I believe that is correct.

25 Q Okay. So did you work together with him on 05:07PM

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1 this Precision Ag model then?

2 A Yes, sir.

3 Q Okay, and did he locate -- did he move to a
4 location in order to be in charge of that business?

5 A No, sir. He did not move to -- are you 05:07PM
6 talking about did he move to Kansas?

7 Q Yeah.

8 A No, sir.

9 Q So did he live in the Springdale area?

10 A No, sir. 05:07PM

11 Q Where did he live?

12 A I don't know exactly. It was in Minnesota
13 somewhere. He lived in Minnesota.

14 Q And he operated that business from there?

15 A Yes, sir. 05:08PM

16 Q Let me hand you what's been marked as Exhibit
17 No. 25 and ask you if you recognize the subject of
18 this matter. This is an E-mail from R. J. Finazzo
19 to Julie Anderson, and then there's another string
20 involving Anderson to Brenda Roe, but your name is 05:08PM
21 referenced in that in that E-mail. It says, Tim
22 Alsup requested lab testing for some Texas samples
23 at the University of Arkansas. Do you recall doing
24 that?

25 A No, sir, I don't recall it. 05:08PM

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1 Q And at the very top it says, Julie, this Tim
2 Alsup requested the testing be done at all location
3 to see something about the waste impact on the
4 environment. Should it be his EXP dot or each LOC
5 dot, question mark. Do you recall doing that, sir? 05:09PM

6 A At one time I believe I was asked by --
7 because we didn't know if there was any differences
8 in turkey litter at our different complexes, to get
9 litter tested from each of the complexes for
10 comparison with each other. 05:09PM

11 Q Okay, and how would that have to do with
12 something about its impact on the environment?

13 A I do not know.

14 Q Well, would it have something to do with the
15 fact that it's land applied? 05:09PM

16 A Sir, I did not write that, and I do not know.
17 I don't know why that statement is in there.

18 Q Well, do you deny the fact that you had
19 testing done on all locations to see about the waste
20 impact on the environment? 05:10PM

21 MR. TUCKER: Object to the form of the
22 question. This appears to be from Mr. Finazzo as
23 opposed from Mr. Alsup.

24 Q Can you answer the question?

25 A What was the question? 05:10PM

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1 MR. GARREN: Can you read it back?

2 (Whereupon, the court reporter read
3 back the previous question.)

4 A There was no waste impact. It was testing
5 litter. It was doing a litter test at a university 05:10PM
6 for different nutrient values. That's what the
7 testing consisted of.

8 Q Did you receive reports back after the tests
9 were performed?

10 A I believe I did, yes. 05:11PM

11 Q And what did you do with those test reports or
12 results?

13 A I do not know exactly.

14 Q Did anyone else examine the data to form any
15 conclusions about what the test reports? 05:11PM

16 A I do not know.

17 Q Did you consult with any outside personnel
18 with regard to the tests and the test reports?

19 A We had outside labs do the testing.

20 Q As a result of the testing and the reports 05:11PM
21 they issued, did you consult with any third parties
22 with regard to what those test results reflected?

23 A No, sir.

24 Q Did you refer those test reports and those
25 results to any other business units within Cargill 05:11PM

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1 to examine them for any reason?

2 A I do not know if any of the other divisions
3 would have got that.

4 Q What became of the test reports or results
5 that you acquired?

05:12PM

6 A They were probably in my files if we kept
7 them.

8 Q And do you know whether or not those files
9 were produced in this case that contained these
10 reports?

05:12PM

11 A I do not know.

12 Q Did you examine your own files for information
13 that was relevant to the State's request for
14 production of documents or did somebody do it for
15 you?

05:12PM

16 A Somebody did it for me.

17 Q Who was the person that did it for you?

18 A Our legal counsel.

19 Q And do you know the name of the person that
20 did that?

05:12PM

21 A I do not know everyone that did it. Michelle
22 Quinn -- is it Michelle? No. Quinn Sporazzo was
23 one of the ladies I remember her name being.

24 Q Were you in your office at the time that she
25 examined these documents?

05:13PM

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1 A Sir, everything in my office was taken,
2 everything.

3 Q Taken where?

4 A To be copied or whatever lawyers do with stuff
5 and given back to me. 05:13PM

6 Q So did you get all the things back that have
7 been taken?

8 A Yes, sir. They're in about six boxes in my
9 office.

10 Q And you don't know today which documents out 05:13PM
11 of those six boxes were produced to the State, do
12 you?

13 A No, sir.

14 Q Was there any other testing that you performed
15 similar to this that's referenced in this Exhibit 05:13PM
16 No. 25 on waste?

17 A Are you asking if we conducted other litter
18 tests?

19 Q Well, this says waste. Did you conduct any
20 testing on manure besides what is referenced in this 05:14PM
21 exhibit?

22 A Any litter sales that was made through
23 Precision Ag, a litter test was completed.

24 Q Okay, and other than those involved with
25 Precision Ag, did you do any other testing besides 05:14PM

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1 that on poultry litter or poultry waste?

2 A There has been a test done on -- one test done
3 for the State of Arkansas on our breeder farms.

4 Q When was that done?

5 A '04 or '05. 05:14PM

6 Q What was the purpose for it being done?

7 A Complying with the Arkansas regulations and
8 laws.

9 Q Do the breeder farms to your knowledge have
10 current nutrient management plans? 05:15PM

11 A The plans that the breeder farms have were
12 done in 1998.

13 Q And are those considered to be current to your
14 knowledge?

15 A I believe plans -- Arkansas considers plans to 05:15PM
16 be five years old. You'd have to ask one of the
17 nutrient management plan writers.

18 Q Well, do you have one in-house in Cargill?

19 A No, sir.

20 Q Does Cargill Turkey Production have a nutrient 05:15PM
21 management plan writer?

22 A No, sir, not certified.

23 Q And so you're telling me that Cargill doesn't
24 know whether or not it has a valid nutrient

25 management plan without asking a plan writer? 05:15PM

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1 A Yes, sir.

2 Q And does Cargill Turkey Production know what
3 the law in Arkansas is with regard to having a
4 nutrient management plan in place?

5 A We need one, yes, sir. 05:15PM

6 Q And do you know how long you've needed one?

7 A We've had one since 1998.

8 Q And do you know how old that one is in
9 relation to the law?

10 A I do not know what the law specifically says 05:16PM
11 about when it needs to be updated, no, sir, I do not
12 know.

13 Q Do you know that under the law that the owner
14 of a nutrient management plan that has a facility or
15 site is required to review it itself annually? 05:16PM

16 A No, sir, I did not know that.

17 Q Do you know who at Cargill reviews the
18 nutrient management plan on an annual basis?

19 A If anybody reviews it, it would have been the
20 breeder manager. 05:16PM

21 Q And do you know whether or not that's being
22 done?

23 A I do not know.

24 MR. GARREN: We've got to take a break for
25 another tape. We'll come back and finish it up. 05:16PM

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1 VIDEOGRAPHER: We are now off the Record.

2 The time is now 5:16 p.m.

3 (Following a short recess at 5:16 p.m.,
4 proceedings continued on the Record at 5:30 p.m.)

5 VIDEOGRAPHER: We are now back on the 05:30PM
6 Record. The time is now 5:29 p.m.

7 Q Mr. Alsup, let's look at Exhibit No. 26. This
8 is an E-mail from you to Mr. Maupin on March 29,
9 2004, and it says the subject of it is N levels in
10 litter. Does that mean nitrogen levels? 05:30PM

11 A I believe so, yes, sir.

12 Q It says, I talked with Susan -- Dr. Susan
13 Watkins at the University of Arkansas about N levels
14 in poultry litter. Do you recall having a
15 conversation with Dr. Watkins? 05:30PM

16 A No, sir, I do not recall.

17 Q It says, she said for all litter samples she
18 has seen a range of 25 through 92 pounds nitrogen
19 per ton of litter. Did you have a discussion about
20 that with her? 05:31PM

21 A Sir, I must have. I have written it in this
22 E-mail.

23 Q What would be the reason for you having a
24 conversation with her about the amount of nitrogen
25 levels in litter? 05:31PM

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1 A I believe this was when the Precision Ag
2 model -- we were still getting that off the ground
3 and we were -- after looking at this E-mail, it
4 would be in relation to the Precision Ag model and N
5 levels for litter. 05:31PM

6 Q Are the portions where it says in the E-mail
7 example colon and there's some numbers there, did
8 you prepare those numbers?

9 A Example colon?

10 Q In the middle part of the E-mail body it says 05:32PM
11 -- starts with 20,000 square feet of grow-out house
12 and then there's a column below that that has other
13 specific numbers and items.

14 A I do not know if I would have -- that would
15 have been my information or Dr. Susan Watkins' 05:32PM
16 information.

17 Q Well, you wrote this E-mail, didn't you?

18 A Yes, sir.

19 Q Okay. So are you saying that that may be
20 something she gave you that you wanted to report to 05:32PM
21 Mr. Maupin and you just don't know for sure?

22 A That is possible.

23 Q Do you know what significance there would be
24 for having an interest in what the nitrogen levels
25 in litter is? 05:33PM

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1 A For the Precision Ag model and selling litter,
2 having a higher nitrogen value may mean a more
3 valuable product to sell.

4 Q Okay. Let me change subjects on you now.

5 We've talked in the past about your having 05:33PM
6 environmental ag meetings and there's update
7 reports. Are those environmental ag meetings still
8 being conducted today?

9 A At times, yes, sir.

10 Q Are there reports being generated for those? 05:33PM

11 A If there's one -- what reports are you
12 referring to?

13 Q The ag environmental updates that you prepare
14 and send an E-mail to Mr. Maupin, that we've looked
15 at several of those. 05:34PM

16 A Well, if the reports you were -- that I think
17 you are referring to, those did not come from
18 environmental update reports. That was the just the
19 general overview of what my snapshot was for the
20 month. 05:34PM

21 Q Okay, but if that's your snapshot of the
22 month, do you still send those to Mr. Maupin?

23 A No, sir, I do not.

24 Q Okay. When did you quit doing that?

25 A I don't know. 05:34PM

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1 Q Why did you quit doing it?

2 A He may not have -- I don't know.

3 Q All right. With regard to the meetings that
4 you said still are occurring involving ag
5 environmental issues, who conducts that meeting; who
6 pulls it together?

05:34PM

7 A If there is an ag environmental meeting, if
8 it's done by phone, I would be the coordinator. If
9 it is an on-site visit at one of the locations, Tim
10 Maupin would probably be the coordinator.

05:35PM

11 Q When was the last time you conducted such a
12 meeting?

13 A This spring I believe.

14 Q And at this spring meeting, what was the most
15 important subject that you believe you were dealing
16 with?

05:35PM

17 A I don't remember.

18 Q Let me hand you Exhibit 31 and ask you to look
19 at that document. This is an E-mail from Devin
20 Helming to Tim Maupin on June 30, 2003. Is this the
21 same Devin that you referred to earlier that was at
22 Crop Nutrition?

05:36PM

23 A Yes, sir, I believe it is.

24 Q Okay. Attached to that is a poultry litter
25 management -- what looks like a report or

05:36PM

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1 presentation. Glance through that and tell me
2 whether or not you were ever in the presence of this
3 presentation when it was made.

4 A Okay, sir. What was the question?

5 Q Have you seen this document before? 05:38PM

6 A I believe I have seen this document, yes, sir.

7 Q Mr. Maupin testified that you were involved in
8 this program but it never fully got off the ground,
9 and it was the Precision Ag program. Is that what
10 this exhibit talks to? 05:38PM

11 A Yes, sir.

12 Q Okay, and did you have anything to do with
13 preparing any or all of this document that's
14 attached to this E-mail?

15 A No, sir. 05:38PM

16 Q Do you know who prepared the map that we see
17 on Page 121968?

18 A No, sir.

19 Q Do you know what the source of the data is
20 that would have supported this graphical display? 05:38PM

21 A No, sir.

22 Q When you saw this in the presentation -- let's
23 make sure. You did see this in the presentation,
24 this map, did you not?

25 A No, sir. I do not know if this was given to 05:39PM

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1 me or if I was actually at a meeting where this was
2 presented. I don't recall.

3 Q Well, let me ask you this: Have you seen this
4 map before?

5 A I do not know if I have seen this particular 05:39PM
6 map. I have seen other maps like -- maybe like
7 this, but I don't know if I've seen this particular
8 one.

9 Q Tell me, sir, what is the current status of
10 any program to haul Cargill's poultry waste out of 05:39PM
11 the IRW.

12 A Cargill does not have poultry waste.

13 Q Does Cargill turkeys produce manure?

14 A The breeder operation -- the breeder
15 operations have turkey breeders on them and, yes, 05:39PM
16 they do produce manure.

17 Q And the manure that's produced by the Cargill
18 breeder birds, is it being hauled out of the IRW?

19 A Yes, sir, it is.

20 Q How is that being done, sir? 05:40PM

21 A BMPs, Inc., is currently doing that.

22 Q And how long has BMPs, Inc., been hauling the
23 poultry manure from the breeder facilities at
24 Cargill?

25 A Summer or the late spring, early summer of '07 05:40PM

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1 I believe.

2 Q Do you know where it's being hauled to?

3 A I believe the customer that is using the
4 litter is 2 State Sod.

5 Q Is Cargill paid any money for the poultry 05:41PM
6 manure that's being hauled from its facilities?

7 A No, sir, we are not.

8 Q Is Cargill paying for any services to have the
9 poultry manure hauled from its facilities?

10 A No, sir, we are not. 05:41PM

11 Q At any time did Cargill determine whether the
12 Precision Ag model was profitable?

13 A The Precision Ag model to my knowledge was not
14 profitable.

15 Q Was there anything that Cargill did to 05:42PM
16 determine how it could be profitable?

17 A The -- to my knowledge the limiting factor and
18 whether that business was going to be profitable or
19 not was the amount of litter that we could have
20 gotten from our contract producers to move to 05:42PM
21 Kansas. It was -- I guess, in other words, it's a
22 volume issue.

23 Q Did Cargill do anything to determine how that
24 model could be profitable?

25 A Increasing the volume would have helped make 05:42PM

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1 that model more profitable.

2 Q More profitable?

3 A Or profitable.

4 MR. TUCKER: Do you need some more

5 caffeine? 05:43PM

6 A No.

7 MR. TUCKER: You look like you're sinking.

8 Q What do you mean by increasing the volume?

9 A Moving more -- selling more litter into

10 Kansas. 05:43PM

11 Q Let me hand you what's been marked as Exhibit

12 34 and ask you if you've seen that document. Do you

13 remember writing an E-mail on May 3rd, 2005 to Mr.

14 Maupin that discussed the issues of what appears to

15 be the Precision Ag model, which is the main body of 05:44PM

16 this document, first page?

17 A You know, I don't remember writing this

18 E-mail.

19 Q The first sentence that says, okay, it's about

20 to slow down a lot. Then it goes on to say, we have 05:44PM

21 about 200 to 300 tons to go. My salary and benefits

22 are not in the below profit amount. Do you recall

23 writing that?

24 A I don't recall writing the E-mail, but my name

25 is on it, and I did write it. 05:44PM

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1 Q Okay, and this reflects -- and correct me if
2 I'm wrong, but this speaks to litter sold in Kansas,
3 so I assume we're talking about your Precision Ag
4 model; correct?

5 A Yes, sir. 05:45PM

6 Q And this shows a profit there without your
7 salary; correct?

8 A Yes, sir.

9 Q All right, and did you calculate what time you
10 had involved in this program to estimate a salary? 05:45PM

11 A All of my salary would have been in this
12 program.

13 Q So you were working 100 percent of the time on
14 this Precision Ag model for this period of time that
15 you are reporting here? 05:45PM

16 A No, sir, that's not what I said. I said my
17 salary would have been in the charged to, or I don't
18 know the right accounting word, but my salary would
19 be going into this Precision Ag budget.

20 Q My question to you is, would your entire 05:45PM
21 salary be going into that or a part of it because
22 you are only working part of the time on this
23 Precision Ag model?

24 A My entire salary would be going into that.

25 Q And if it did, would this still reflect a 05:45PM

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1 profit?

2 A No, sir. I do make more than \$8,000, not much
3 more.

4 Q Do you know whether or not by the end of May,
5 as this reflects, whether 17 to 1,800 tons were in 05:46PM
6 fact moved as you projected?

7 A Ask that question one more time.

8 Q It says here, we have sold around 200 tons I
9 have not gotten the bills for. Then it says, thus,
10 they're not included in the above numbers. By the 05:46PM
11 end of May, we should have moved about 17 to 1,800
12 tons. Did that in fact occur?

13 A I do not know for a fact that that occurred.

14 Q Okay. In the next to the last paragraph it
15 says, I want to remind you of the problem that 05:46PM
16 Charlie will have when the litter legislation takes
17 effect next year. I do not think he will -- it
18 says, I do not think he will not be able to spread
19 on the existing acreage that he's currently
20 spreading. What did you mean by that? 05:47PM

21 A When Arkansas was looking at their legislation
22 and their regulations, nobody knew if -- what those
23 requirements were going to be, and I was trying to
24 make Tim aware that if there were thresholds or
25 major changes, then we may not be able to utilize 05:47PM

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1 that acreage.

2 Q Prior to Cargill placing all of their poultry
3 manure with BMP for removal, were there any soil
4 tests made of the breeder farm facilities?

5 A The soil test was done in 1998 when the 05:47PM
6 litter -- when the nutrient management plans were
7 done.

8 Q Other than that soil test, have there been any
9 other soil tests made on those breeder facilities
10 farms? 05:48PM

11 A No, sir.

12 Q During the time 1998 until BMP was removing
13 the poultry manure, was land spreading occurring on
14 the breeder farms?

15 A We were -- BMPs started removing or shipping 05:48PM
16 litter out in, like I say, the spring, late spring,
17 early summer of '07. Before that, Mitch Moore was
18 hauling out litter from the breeder farms starting
19 in '05.

20 Q Who is Mitch Moore? 05:48PM

21 A He was a gentleman that was trying to start a
22 business in Missouri.

23 Q Let me hand you Exhibit No. 33 and ask you to
24 look through that document. This has been
25 represented by Cargill to be all of the records 05:49PM

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1 reflecting the waste that's been removed from the
2 breeder farm facilities. Did you assist in making
3 that representation?

4 MR. TUCKER: I object to your
5 characterization of what this is, but the document 05:49PM
6 speaks for itself, and you can ask whatever
7 questions of it you like.

8 MR. GARREN: I'm only referring to the
9 responses to discovery that Cargill has presented to
10 the State of Oklahoma about what these documents 05:49PM
11 represent.

12 MR. TUCKER: I don't believe we referred to
13 it as disposition of waste from the breeder farms.
14 I could be in error, of course, but --

15 Q Let me ask you this while you're looking at 05:50PM
16 this: Were you responsible for monitoring the
17 program that Mitch Moore provided to Cargill for
18 removing the poultry manure from the breeder farms?

19 A I set up Mitch Moore as the person who was
20 coming to bringing the trucks down, getting the 05:51PM
21 litter loaded, and he was taking that back to
22 Missouri.

23 Q And how did you locate Mr. Moore?

24 A I don't remember how I located him.

25 Q Did Cargill pay Mr. Moore to remove the litter 05:51PM

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1 from the barns?

2 A No, sir.

3 Q Did Mr. Moore pay Cargill any money for the
4 litter when he removed it?

5 A No, sir. 05:51PM

6 Q So do you know whether Mr. Moore was being
7 paid by the purchaser, the end user, if you will, of
8 the poultry litter?

9 A Sir, I believe that was his business plan, his
10 business plan for that. 05:52PM

11 Q Let me ask you this, sir: With regard to the
12 breeder farm acreages, did anybody else land spread
13 poultry waste or poultry litter on that breeder farm
14 acreage of the six breeder farm facilities besides
15 Cargill? Let me make it this way: Did Cargill 05:53PM
16 allow anyone else to apply poultry litter to its
17 breeder farm locations at any time after 1998?

18 A There have been instances where litter from
19 the breeder farms have been applied.

20 MR. TUCKER: That's not the question he 05:54PM
21 asked you. I know you are more tired than he is.
22 Listen real close to the question because he asked
23 you a fair question. Listen to the question.

24 Q Other than the litter coming from the breeder
25 farms itself, were any other persons or entities 05:54PM

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1 allowed to apply litter on the breeder farm
2 acreages?

3 A No, sir.

4 Q Did the breeder farms have cattle running on
5 those acreages that were where the poultry litter
6 was being applied?

05:54PM

7 A There has been cattle that has been run on
8 acreage where the breeder farms are.

9 Q And what years were cattle run and which
10 facilities?

05:55PM

11 A I do not know.

12 Q Who would know?

13 A The breeder manager.

14 Q And that is?

15 A Charlie Delap or was Charlie Delap.

05:55PM

16 Q Who would know now?

17 A The breeder manager now is Gerald Duncan.

18 Q Okay. Are there records that would reflect
19 whether cattle were allowed to run on the breeder
20 farm facilities?

05:55PM

21 A I do not know.

22 Q And do you know what period of time the
23 breeder farm facilities had cattle on them?

24 A No, sir.

25 Q Do you know whether or not the breeder farm

05:55PM

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1 facilities produced hay that was cut and removed?

2 A No, sir.

3 Q They did not?

4 A No, sir. I think you asked do I know. No, I
5 do not know. 05:55PM

6 Q You do not know, okay. Who would know?

7 A The breeder managers.

8 Q And that would be Charlie Delap who has been
9 fired?

10 A Yes, sir. 05:56PM

11 Q Anyone besides him?

12 A No, sir.

13 Q Do you know of any records that might exist
14 that would reflect whether hay was cut from those
15 breeder facilities? 05:56PM

16 A No, sir.

17 Q Has Cargill contacted any other integrators,
18 who may be defendants in this case, to jointly
19 provide poultry litter to your Precision Ag model in
20 order that it could be profitable? 05:56PM

21 A No, sir.

22 Q What effort did Cargill make?

23 MR. TUCKER: I want to make sure the Record
24 is clear. He mentioned that one Simmons incident.

25 MR. GARREN: There was a Simmons one-time 05:57PM

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1 deal he talked about. I understand.

2 MR. TUCKER: And I apologize for
3 interrupting, but having visited with him at the
4 last break, I know that the witness is exhausted.
5 So I apologize for breaking in. 05:57PM

6 Q What has Cargill done to -- what efforts did
7 Cargill take in order to increase the volume of
8 litter available to produce to the Precision Ag
9 model?

10 A We canvassed our contract producers to see if 05:57PM
11 any litter was available. There was, like I say,
12 the one instance with Simmons. There was a house or
13 two that they agreed that we could sell.

14 Q When you contacted the contract growers, what
15 price did you offer to pay for the litter? 05:58PM

16 A We were not paying for the litter.

17 Q So you just wanted them to donate it in order
18 that Cargill could make a profit on hauling it?

19 A We provided the service to come actually
20 remove the litter from the house and load it on the 05:58PM
21 trucks, provided the equipment. The grower was not
22 out any expense for the litter removal.

23 Q The Exhibit 33, the Mitch Moore hauling
24 records and invoices, who was responsible for
25 maintaining these documents? 05:59PM

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1 A Well, sir, if you're talking about this entire
2 thing, you have a lot more than just Mitch Moore in
3 here.

4 Q Okay. Tell me what it is you find in here
5 that's more than Mitch Moore.

05:59PM

6 A Okay. I forgot what you call it --

7 Q Bates number.

8 A Okay. Bates number 95158 is not Mitch Moore.

9 Q I'm sorry. Let me look at the page you are
10 referring to. Hang on just a second. Just so the

06:00PM

11 Record is clear, we have two 95158s. So the one you
12 are referring to is one that reflects an invoice
13 with Cargill Turkey Production at the top, Invoice
14 No. 7 dated 5-26-05; correct?

15 MR. BULLOCK: Why don't you have him put an
16 A above the Bates number just to distinguish the one
17 that he is talking about.

06:00PM

18 Q Would you just put a capital letter A above
19 the number there on the Bates?

20 A (Witness complied).

06:01PM

21 Q All right. Thank you. Now, tell me what it
22 is that -- why this is not connected to Mitch Moore.

23 A This is a Precision Ag invoice.

24 Q Okay.

25 A The next page, 95159 -- wait a minute. No,

06:01PM

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1 no, no, no, no. Bates number 95172 is not Mitch
2 Moore.

3 Q Okay, and what is it connected to?

4 A It looks like a check for payment to Precision
5 or for litter that was sold through Precision Ag. 06:02PM

6 Q And you know that because why?

7 A It is a payment to Cargill Turkey Production.

8 Q Okay. The next page following it is an
9 invoice that reflects the same dollar amount on the
10 check; correct? 06:02PM

11 A Yes, sir. Bates number 95174 is not Mitch
12 Moore.

13 Q Okay. That would be part of Precision Ag with
14 Mr. Lennington again; correct?

15 A Yes, sir. 06:02PM

16 Q All right.

17 A Bates number 59175 is a litter test done for
18 Precision Ag.

19 Q All right.

20 A I believe Bates numbers 95176, 95177, 95178,
21 95179 would have been scale tickets for the
22 Precision Ag -- for the sale of the previous pages. 06:03PM

23 Q Those connected with Mr. Lennington?

24 A Well, sir, it doesn't have -- I'm assuming
25 since they're together, it came from the same -- if 06:04PM

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1 it -- I'm assuming it went for the Lennington is
2 what I'm assuming.

3 Bates number 95180 is a check that would have
4 been for a Precision Ag litter sale, as the invoice
5 on 95181 and 95182. That was all of -- well, and
6 95183. 95184, 95185, 95186, 95187, 95188, that was
7 all for a litter sale through Precision Ag to Mr.
8 Adams. Bates number 95189 is another litter sale
9 through Precision Ag. 95190, 95191, 95192, 95193,
10 95194, 95195 would have been a Precision Ag going to
11 -- sale to Mr. Wilson.

06:04PM

06:05PM

12 Q I know this will probably make it easier at
13 this point. Go through the rest of the pages and
14 tell me where Mitch Moore sales occurred. It
15 appears that most of this is Precision Ag. Finish
16 starting with 95196 and just tell me where there is
17 a document that relates to Mitch Moore.

06:06PM

18 A Okay.

19 Q That might make it a little easier.

20 A Okay. From this Exhibit 33, I believe the
21 only pages that are attributed to Mitch Moore would
22 be 95156, 95157 and 95158.

06:06PM

23 Q And the 58 is without the A that you've
24 affixed; correct?

25 A Oh, thank you. Yes, sir, without the A.

06:08PM

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1 Q All right. Any others? I think we've gone
2 through the rest of them.

3 A I believe I have gone through the rest of
4 these.

5 Q All right. Let me hand you Exhibit No. 32. 06:08PM

6 I'll represent to you that these are responses by
7 Cargill Turkey Production to supplemental or to
8 plaintiff's September 13th set of interrogatories,
9 and I'm going to specifically address your attention

10 to Page 3 of this document, the interrogatory of 06:08PM

11 which calls for information relating, again, to the
12 hauling of poultry litter outside of the Illinois
13 River watershed, and there's a response there on

14 Page 4, a table. I want to know whether or not you
15 had anything to do with the preparation of the 06:09PM

16 information contained in the table on Page 4.

17 A BMPs, Inc., would have given me that
18 information.

19 Q Did you get it from BMP's, Inc., and then give
20 it to counsel or others to prepare this table? 06:09PM

21 A It is possible, yes, sir.

22 Q Do you know for a fact you did or did it come
23 from someone else or did someone else do that?

24 A I do not know if I did this personally, no,
25 sir. 06:09PM

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1 Q Given all of the records shown in Exhibit 33,
2 which were the waste -- included Mitch Moore and the
3 Precision Ag and given the responses in this
4 interrogatory, do you know of any other instance
5 where poultry waste has been removed from the 06:10PM
6 breeder facilities -- poultry litter has been
7 removed by the breeder facilities outside the IRW?

8 MR. TUCKER: Talking about the documents
9 that were contained in Exhibit 33?

10 Q The documents in Exhibit 33 and the responses 06:10PM
11 in Exhibit 32, the table of part of that
12 interrogatory response, are there any other
13 instances that would reflect poultry waste removed
14 from the breeder farm facilities outside the IRW?

15 A We are continuing to haul litter from the 06:10PM
16 breeder farms, and I'm looking at the table and
17 it --

18 Q It ends at October 19th, '07.

19 A Yes, sir.

20 Q And you're right. Through that date that this 06:11PM
21 ends and previous to that date, we have in Exhibit
22 32 and -- Exhibit 33 and Exhibit 32 all of the
23 information which would show the sum total of
24 poultry litter removed from the breeder farms
25 outside the IRW; correct? 06:11PM

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1 A Through the Precision Ag model, Mitch Moore
2 and BMPs, Inc., yes, sir, I believe you --

3 Q You've said that correctly, better probably
4 than I did?

5 A Okay. 06:11PM

6 Q Is there anyone -- is there any other example
7 or incidents where poultry litter -- poultry litter
8 has been removed from the breeder farms outside,
9 outside the IRW besides the three entities that you
10 described? 06:11PM

11 A If there is, I do not know it.

12 Q Okay. I hand you Exhibit 38. This has been
13 represented to the State of Oklahoma by Cargill.
14 These are the nutrient management plans that go to
15 the breeder farms. Have you seen these documents 06:12PM
16 before?

17 A I have not read it from front to back, but I
18 have seen them, yes.

19 Q I'm not asking whether you've read them. Just
20 have you seen the nutrient management plans at any 06:13PM
21 time that go to the breeder farm facilities?

22 A Yes, sir.

23 Q Okay, and in glancing through this, is this
24 what appears to be the nutrient management plans for
25 breeder farms? 06:13PM

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1 A Okay.

2 Q If you're going to go through every page, I'm
3 going to go off the Record while you do that because
4 I only have about ten or fifteen minutes left.

5 MR. TUCKER: What he asks is what it 06:13PM
6 appears to be. He's not asking you to represent if
7 it's complete and accurate. He just wants to know
8 generally if we are looking at breeder farm NMPs.

9 A I believe so, yes, sir.

10 Q All right. The point is, you've seen them 06:13PM
11 before and this like what those plans should look
12 like; correct?

13 A Yes, sir, it appears so.

14 Q I'll direct your attention to Page 123748. At
15 the last paragraph this talks about Farm 2. Third 06:14PM
16 line up it begins, soil tests that were performed on
17 all fields March of 1998 indicate Field 1-1 had
18 phosphorus levels of 797 pounds per acre. We talked
19 earlier today about your fear of the phosphorus
20 levels being extremely high. In your opinion is 06:14PM
21 this an example of an extremely high phosphorus
22 level?

23 A Again, if the -- relating back to the Arkansas
24 PI and how this was prepared, it would be -- it
25 would be their determination whether that would be a 06:14PM

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1 high, high number or not.

2 Q In March of 1998 there was no Arkansas PI, was
3 there?

4 A I don't know.

5 Q You don't know? 06:14PM

6 A I don't know. I don't think. It may not have
7 been, may not have been.

8 Q Okay. Let's assume there was in March -- in
9 March of 1998 let's assume there wasn't an Arkansas
10 PI in effect. Is it your opinion that this 06:15PM
11 phosphorus level is extremely high?

12 A I do not know what the -- there was no
13 regulations in 1998. I do not know what threshold
14 limits they were using.

15 Q My question is, in your opinion is this a 06:15PM
16 phosphorus level in your opinion that appears to be
17 high?

18 A It could be. Depending on the soil type and
19 the location, forages, it has the possibility of
20 being high. 06:15PM

21 Q Look at Page 123750. At the bottom of that
22 page, the very last line on that page it says, Field
23 1-2 soil test results dated 3-30-98 indicate
24 phosphorus levels of 972 pounds per acre. Is that
25 extremely high in your opinion? 06:16PM

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1 A Depending on the threshold amounts and the way
2 the nutrient management plans are written, that has
3 a possibility of being high, yes.

4 Q What threshold amount are you referring to?

5 A I do not know what the nutrient management 06:16PM
6 plan writer used in 1998 to write these plans.

7 Q Let me ask you this: This is a soil test?

8 A Uh-huh.

9 Q And it's a result of a soil test.

10 A Okay. 06:16PM

11 Q And are you telling me that a nutrient
12 management plan could be written that would
13 authorize a level of 972 pounds per acre?

14 A I don't know. Could be, could not be.

15 Q Well, let me ask you this: You were certified 06:16PM
16 to write nutrient management plans in Arkansas. Did
17 they at any time tell you that 972 pounds per acre
18 was an appropriate level of phosphorus?

19 A At that time when I was certified, we were
20 using the Arkansas PI, the PI index. I don't 06:17PM
21 remember ever talking about certain levels, but in
22 that formula, that formula could say that there was
23 a medium risk, high risk, low risk I believe, but in
24 1998 I don't know what they were using.

25 Q Do you know what the agronomic need is for 06:17PM

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1 pastureland of either Bermuda or fescue grass for
2 phosphorus?

3 A No, sir.

4 Q Did you not learn that in your nutrient
5 management plan writing certification sources? 06:17PM

6 A Sir, they have -- when you are being trained,
7 they have tables set up that have different crops.
8 They have different forages, needs, requirements.
9 There's a table for different soils, different --
10 there's a myriad of tables. Did I have to memorize 06:18PM
11 that? No, sir, I did not.

12 Q Let's talk about Charlie Delap. He's been
13 fired; is that correct?

14 A Yes, sir.

15 Q Did you participate in the conversation at his 06:18PM
16 firing or termination?

17 A No, sir, I did not.

18 Q Were you advised in advance of his being
19 terminated that he was going to be terminated?

20 A No, sir. 06:18PM

21 Q When were you advised that he was terminated
22 and by whom?

23 A It would have been some date after his
24 termination, and I believe Jason Witt would have
25 informed me. 06:18PM

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1 Q Did you, prior to his termination speak, to
2 Charlie Delap -- did you speak to Charlie Delap at
3 any time regarding his continued spreading of
4 poultry waste at the breeder farms prior to his
5 termination? 06:19PM

6 A In preparing for my 30(b)(6) deposition that
7 was scheduled earlier, I did talk to Charlie about
8 that.

9 Q What did you talk to him about?

10 A That in my prep work for 30(b)(6), I was 06:19PM
11 trying to get an up to date -- what was going on
12 with breeder farms, what was happening, and that is
13 where Charlie Delap then informed me that the
14 sweepings were being applied.

15 Q And your preparation was prior to April of 06:20PM
16 '07; correct? That's what you testified earlier I
17 believe on your 30(b)(6) preparation. Am I
18 incorrect on that?

19 A Not '07.

20 Q '08. I apologize. In advance of April of '08 06:20PM
21 you were getting ready for the 30(b)(6)?

22 A It could have been the end of -- yes, sir, I
23 believe it was in April.

24 Q And with regard to your preparation for the
25 30(b)(6), did you complete your preparation; were 06:20PM

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1 you prepared and ready to go and do that?

2 A I think I was, yes, sir.

3 Q Okay, and when Charlie Delap, in your
4 preparation for 30(b)(6), told you that he was
5 spreading this waste, poultry litter, did he tell
6 you where it was being spread?

06:20PM

7 A On the land where the breeder farms are.

8 Q All right. So if poultry litter was coming
9 out of Farm 1, was it being spread at Farm 1 or
10 would it have been spread at some other breeder farm
11 location?

06:21PM

12 A He did not tell me that the exact locations of
13 where the sweepings were applied. I assumed that if
14 sweepings came out of Farm 1, it would have been
15 applied to the land that was where Farm 1 is, where
16 it physically sits.

06:21PM

17 Q Did he tell you what instrument or vehicle he
18 was using in order to spread the poultry litter?

19 A No, he did not.

20 Q Do you know what was available to him in order
21 to be able to spread the used poultry litter?

06:21PM

22 A There was a -- I don't know the name of it but
23 a pull behind the tractor -- I think it's driven by
24 the PTO of the tractor, a little spreader-type
25 trailer-type thing.

06:22PM

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1 Q Did he tell you how many loads he would spread
2 at any of the locations?

3 A No, sir.

4 Q Did you ask him how many loads he was
5 spreading at any of the locations?

06:22PM

6 A No, sir.

7 Q Was that not a concern for you, to know how
8 much he had been spreading?

9 A After we found out or after he informed me
10 that the sweepings were being applied and I reported
11 it, we had a clean-out at one of the breeder farms
12 scheduled. I went out there, and after a house was
13 cleaned out and the litter was loaded, I had the --
14 or they were doing their normal sweeping, and I had
15 them sweep that to the end of one house and I took a
16 measurement of it.

06:22PM

17 Q When did you do this?

18 A Within the last month.

19 Q Within the last 30 days of today?

20 A I believe so, yes, sir.

06:23PM

21 Q And how did you measure the remaining poultry
22 litter?

23 A The sweepings were measured with a tape
24 measure.

25 Q And tell me how you did it.

06:23PM

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1 A I -- they did the sweepings to the end of the
2 house. There was two piles. I took a tape measure
3 and measured the length, roughly the length, roughly
4 the width and the height.

5 Q And what did you find in your measurements? 06:23PM

6 A That there were two piles in the middle of the
7 house, and I don't remember the exact measurements.
8 They were about a foot high to a foot and a half
9 high. They were about six, seven feet wide and ten,
10 eleven, twelve feet long maybe. I don't remember 06:24PM
11 the exact measurements.

12 Q And this for a single house; correct?

13 A Yes, sir.

14 Q And it would be a grow-out house?

15 A It would be a production or breeder production 06:24PM
16 house.

17 Q Yeah. I misspoke. I appreciate that, and how
18 many houses are there on the breeder farms?

19 A The particular house -- the particular farm
20 that I was doing the measurement, there are four hen 06:24PM
21 houses where the eggs are laid and one tom barn.

22 Q And the other breeder farms have similar
23 numbers of houses?

24 A Farm 6 has the five; Farm 4 has five; Farm 5
25 has five. Farms 1, 2 and 3 have three houses. 06:25PM

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1 Q Did Mr. Delap inform you whether or not he had
2 taken a soil test prior to the application of this
3 poultry litter?

4 A No, he did not.

5 Q Did you ask him whether or not he had taken a 06:25PM
6 soil test before the application of this litter?

7 A No, I did not.

8 Q Do you know whether or not under the laws of
9 the State of Arkansas he was required to have a soil
10 test before the application of that litter? 06:26PM

11 A I don't know the exact law, but it is
12 possible.

13 Q Was anybody present besides you when you took
14 the measurement of this clean-out within the last 30
15 days? 06:26PM

16 A Yes, sir.

17 Q Who was it?

18 A Jason Witt.

19 Q And was it recorded in any way or form the
20 measurement taking conducted by you? 06:26PM

21 A Yes, sir, it was recorded.

22 Q How was it recorded?

23 A Candy Smith recorded it.

24 Q How was it recorded?

25 A She wrote it down. 06:26PM

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1 Q She wrote it -- what down, what you told her?

2 A Yes, sir.

3 Q Okay, and did she take any visual recordings,
4 camcorder, something like that?

5 A I believe she took pictures, yes, sir. 06:27PM

6 Q Were they still pictures or moving pictures?

7 A I believe they were still pictures.

8 Q Was there any audio recording made?

9 A I do not believe so. Could possibly have been
10 but I don't remember a -- are you talking about a 06:27PM
11 video camera?

12 Q Yes, sir.

13 A I don't remember if Candy had that, had a
14 video camera or not.

15 Q And tell me Candy's last name again. 06:27PM

16 A Candy Smith.

17 Q And is she a paralegal for this law firm,
18 Rhodes Hieronymus?

19 A Yes, sir.

20 Q Was anyone else present besides her and you 06:27PM
21 and Mr. Witt?

22 A No, sir.

23 Q Who cleaned out the house before you had it
24 swept up?

25 A The employees of the breeder farm. 06:27PM

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1 Q And were they -- I'm sorry, so they cleaned up
2 the -- did what would be considered a clean-out of
3 the barn?

4 A Well, the breeder department --

5 MR. TUCKER: Listen to the question. 06:28PM

6 A Okay.

7 Q Did they conduct a clean-out of that breeder
8 barn as it normally would have been done?

9 A They loaded the litter on -- yes.

10 MR. TUCKER: Sir -- 06:28PM

11 A Yes.

12 Q And do they normally do that when the breeder
13 farms or barns are cleaned out; is that their duty
14 and responsibility on a normal basis?

15 A Yes, sir. 06:28PM

16 Q So when BMP comes in and picks up the poultry
17 litter to go and have it hauled off, your employees
18 clean out the barn for that purpose?

19 A Yes, sir.

20 Q And they've done that the entire time with 06:28PM
21 BMP?

22 A Yes, sir.

23 Q Were they doing it when Mr. Delap was
24 spreading this poultry litter?

25 A The sweeping, yes, sir. 06:28PM

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1 Q The clean-out before the sweeping up, were
2 they doing that --

3 A Yes, sir.

4 Q -- before?

5 A Yes, for BMPs, Inc., and for Mitch Moore, yes, 06:29PM
6 sir.

7 MR. GARREN: Let's take a break and check
8 my notes and see how many more questions I've got
9 here.

10 VIDEOGRAPHER: We're now off the Record. 06:29PM
11 The time is now 6:28 p.m.

12 (Following a short recess at 6:29 p.m.,
13 proceedings continued on the Record at 6:38 p.m.)

14 VIDEOGRAPHER: We are now back on the
15 Record. The time is now 6:38 p.m. 06:38PM

16 Q Mr. Alsup, I've handed you Exhibit No. 40, and
17 it's an E-mail exchanged between you and Mr. Maupin
18 on or about September 13, 2007. In paragraph -- let
19 me see. At the top it says, maybe we should start
20 the conversation with Bob at the King Farm about the 06:39PM
21 litter. We will need to meet our commitments under
22 the agreement. Do you know what agreement it was he
23 referred to?

24 A We -- Cargill has an agreement with the
25 Oklahoma Scenic River Commission to move a certain 06:39PM

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1 amount of litter either through a company-owned
2 facility or contract farm, farms that are in the
3 IRW, to remove that from -- out of the watershed.

4 Q Okay. In your E-mail to him at Paragraph 2 it
5 talks more about that and it says, talked about how 06:40PM
6 we are going to move 75,000 to 80,000 tons of litter
7 this coming year when the prices are 7.50 to \$8 a
8 ton in the house. Is the 75,000 to 80,000 tons your
9 commitment in that agreement?

10 A No, sir. 06:40PM

11 Q Is it more than that?

12 A No, sir.

13 Q Is it less than that?

14 A Yes, sir.

15 Q What is your commitment? 06:40PM

16 A I do not know the exact commitment. I don't
17 know our exact commitment.

18 Q Okay. The next sentence says, I suggested
19 that they buy bedding instead of paying for the
20 litter. What did you mean by that? 06:40PM

21 A This would have been a meeting with BMPs,
22 Inc., I believe because of the lack of availability
23 of litter.

24 Q You're talking about new bedding material,
25 right, or not? 06:41PM

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1 A BMPs, Inc., I think at that time had voiced
2 some concern about moving this 75 to 80,000 tons in
3 the coming year, and they were looking for ideas to
4 maybe help get contract producers interested in
5 using BMPs, Inc., to move litter out of the IRW and 06:41PM
6 what I suggested is maybe they look at buying -- buy
7 bedding for that because at that time there was a
8 bedding shortage. I do know there was some farms or
9 had heard reports that there was some farms in
10 Missouri just over the line that they had cleaned 06:42PM
11 out, sold their litter and called the bedding
12 suppliers to put bedding, new bedding back into
13 their houses and there was not bedding available.
14 Q Okay. Was part of the concern about moving
15 the 75,000 to 80,000 tons because of the price at 06:42PM
16 the time; is that what I understand you to be saying
17 here?
18 A Well, I think what I'm trying to say is I
19 believed or maybe I was trying to get them to look
20 at maybe -- the litter cost to rebed a facility is a 06:42PM
21 higher cost than what getting 7.50 to \$8 a ton for
22 the litter. Maybe -- in other words of putting it,
23 maybe the 7.50 to \$8 they were getting for their
24 litter through BMPs, Inc., would not cover the
25 replacement bedding that was needed after the house 06:43PM

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1 was cleaned out.

2 Q Okay. You then say in the latter part of that
3 paragraph, I think it will come from the following,
4 talking about the tonnage, and you list the breeder
5 farms, Fisher, Hill Haven and Findahl. Did those 06:43PM
6 facilities in fact supply the tonnage that you have
7 listed there?

8 A I have asked -- the Fisher number, Hill Haven
9 number and Findahl number, I have asked them and
10 they gave they those numbers. The breeders farms 06:43PM
11 was -- we were moving all of our litter from the
12 breeder farms and that was an estimated tonnage.

13 Q Do you know how much litter is moved from the
14 breeder farms on an annual basis?

15 A I do not have a report that states an annual 06:44PM
16 removal, no, sir.

17 Q Do you have an estimate on the number of tons
18 that the six breeder farms produce that should be
19 removed?

20 A I have estimated before about 400 to 425. 06:44PM
21 Wait a minute. Is that right? 400 to 425 tons of
22 litter as an estimation for a breeder farm in a
23 year.

24 Q And that breeder farm would contain how many
25 houses that you're estimating? 06:45PM

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1 A Farms 1, 2 and 3 contain three houses. Farms
2 4, 5 and 6 contain five houses.

3 Q Okay. So is your estimate for the five-house
4 farm at 400 to 425 tons or for the three-house farm?

5 A It is the same estimate for all farms. 06:45PM

6 Q And you're telling me that three houses will
7 produce the same amount as five houses?

8 A Yes, sir.

9 Q And tell me why that is.

10 A There is the same square footage and the same 06:45PM
11 -- roughly the same number of breeders come onto
12 those farms for a production.

13 Q So do I take it from that that Houses 4, 5 and
14 6 are slightly smaller than Houses 1, 2 and 3?

15 A The hen houses where the eggs are laid, the 06:46PM
16 houses that -- the hen houses that -- 4, 5 and 6 are
17 smaller than what they are and 1, 2 and 3, hen
18 houses.

19 Q Have you met the commitment that you talked
20 about in this? 06:46PM

21 A I don't know. I think we're getting close. I
22 have to talk to -- I haven't talked to BMPs, Inc.,
23 to see where we stand on that, so --

24 Q Do you calculate your commitment under an
25 annual calendar period or some fiscal period? 06:46PM

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1 A I think BMPs, Inc., is doing it on a physical
2 (sic).

3 Q Fiscal?

4 A Fiscal period, yes, sir.

5 Q And do you know what that period is? 06:47PM

6 A No, sir, I do not.

7 MR. GARREN: I have no other questions.

8 MR. TUCKER: Mr. Alsup, you have the right
9 to read and sign this deposition, or you may waive
10 the right to read and sign your deposition. It's 06:47PM
11 your choice.

12 THE WITNESS: I would like to read and then
13 sign it.

14 MR. TUCKER: Very well. Thank you.

15 VIDEOGRAPHER: This concludes the 06:47PM
16 deposition of Mr. Tim Alsup. The time is now 6:47
17 p.m. We are now off the Record.

18 (Whereupon, the deposition was
19 concluded at 6:47 p.m.)
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SIGNATURE PAGE

I, Tim Alsup, do hereby certify that the foregoing deposition was presented to me by Lisa A. Steinmeyer as a true and correct transcript of the proceedings in the above styled and numbered cause, and I now sign the same as true and correct.

WITNESS my hand this _____ day of _____, 2008.

TIM ALSUP

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2008.

Notary Public

My Commission Expires:

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C E R T I F I C A T E

[illegible]

I further certify that the foregoing 280 pages contain a full, true and correct transcript of the deposition taken at such time and place.

WITNESS MY HAND AND SEAL this 19th day
of June, 2008.

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CORRECTIONS TO THE DEPOSITION OF
TIM ALSUP

PAGE AND LINE NUMBER

CORRECTION

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